

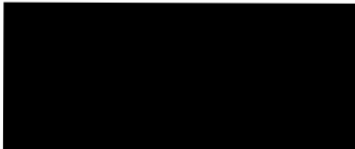


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 12, 2021

Via electronic mail



Via electronic mail

Mr. David Wright
Chairperson
Edgar County Housing Authority
Board of Trustees
604 East Highland Drive
Paris, Illinois 61944
edgarhousing@gmail.com

RE: OMA Request for Review – 2019 PAC 61109

Dear [REDACTED] and Mr. Wright:

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 explained below, the Public Access Bureau concludes that the agenda for the Edgar County Housing Authority (Authority) Board of Trustees' (Board's) November 20, 2019, meeting provided sufficient notice concerning the status of the Authority's executive director's employment but failed to provide adequate notice related to the selection of an interim-executive director.

In her Request for Review [REDACTED] alleged that at its November 20, 2019, meeting the Board took final action to dismiss her from her position as the Authority's executive director. The Board also hired Mr. John Hollis, who was the Authority's former-executive director, to fill that position, including setting his work hours and rate of pay. [REDACTED]

[REDACTED] asserted the Board did not provide sufficient advance notice of those final actions on the meeting agenda.

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On January 3, 2020, this office sent a copy of the Request for Review to the Board and asked it to provide a copy of the meeting minutes from the Board's November 20, 2019, meeting together with a detailed response to the allegations in ██████████ Request for Review. This office also asked the Board to confirm that the agenda ██████████ included with the Request for Review was the final and approved version of that document.

On January 21, 2020, this office received the Board's written answer and the supporting materials, which outside counsel submitted on behalf of the Board. Later that day, this office forwarded the Board's answer to ██████████; she replied on January 27, 2020.

DETERMINATION

"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." *See, for example*, 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 agenda for the Board's November 20, 2019, meeting included an item for "New Business – Status of Executive Director."¹ The minutes for the meeting demonstrate that the Board voted on motions to, "remove [REDACTED] as Executive Director and to name John Hollis as interim Executive Director to serve until a new Executive Director is hired by the board."² Concerning the interim executive director position, the Board voted to "set as a short term, part-time (less than 32 hours per week average) position with no benefits. The hourly wage was set at \$38.00."³

The Public Access Bureau has previously determined that overly generic agenda items pertaining to personnel do not meet the requirements of section 2.02(c) of OMA. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 50745, issued January 17, 2018, at 2-3 (agenda item "Discussion of Personnel Matters (Possible Action Items)" did not provide general subject matter of vote to remove treasurer); Ill. Att'y Gen. PAC Req. Rev. Ltr. 48630, issued August 31, 2017, at 3-4 (agenda items "Action Regarding Executive Session Issues" and "Personnel- Section 2 (c) (1)" did not provide general subject matter of vote to appoint village administrator); Ill. Att'y Gen. PAC Req. Rev. Ltr. 42948, 42969, issued May 25, 2017, at 4-5 (agenda item "Employment of Personnel" did not provide general subject matter of vote to approve administrators' salaries). This office has also noted, however, that section 2.02(c) of OMA generally does not require names to be listed on an agenda in connection with personnel transactions. Further, this office has explained that

to comply with section 2.02(c), an agenda item for personnel actions must at least reference the category or categories of employees at issue, such as teachers, bus drivers, social workers, etc. Absent such general information concerning the positions subject to Board actions, members of the public who follow the activities of the Board will have little knowledge of what it will be acting upon. Ill. Att'y Gen. PAC Req. Rev. Ltr. 53265, issued August 28, 2018, at 5.

¹Edgar County Housing Authority, Board of Trustees, Regular Meeting, Agenda Item 9 (November 20, 2019).

²Edgar County Housing Authority, Board of Trustees, Regular Meeting, November 20, 2019, Minutes 2.

³Edgar County Housing Authority Board of Trustees, Regular Meeting, November 20, 2019, Minutes 2.

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In its response to this office, the Board argued that the agenda item quoted above set forth the general subject matter of the personnel actions the Board took during its November 20, 2019, meeting. Specifically, the Board contended the use of the word "status" was broad enough to provide sufficient notice that the "status of the Office of Executive Director was being evaluated, assessed and could be acted upon."⁴ With respect to the Board's action concerning the selection of the interim-executive director, the Board's response to this office asserted "[t]he appointment of the short-term interim Executive Director and provision for his rate of pay, are all consistent with the agenda topic of the Status of the Executive Director."⁵ [REDACTED] Request for Review asserted that the agenda items did not provide enough detail concerning the actions the Board took.⁶

The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶47, 39 N.E.3d 205, 213 (2015). The Merriam-Webster Dictionary defines the word "status" as, among other things, "the condition of a person * * *[,]" and a "state or condition with respect to circumstances."⁷ This definition signals that the Board intended to consider [REDACTED] in her role as the Authority's executive director under the existing circumstances at the time of the November 20, 2019, meeting. Therefore, the agenda item "New Business – Status of Executive Director"⁸ identified the general subject matter of the action to be taken, namely it alerted the public that the Board might consider and vote on [REDACTED] continued employment. While a summary on the agenda indicating that the Board might vote to remove [REDACTED] from that position would have better informed the public, that level of detail was not required to be included on the agenda to provide advance notice of the general subject matter of the Board's final action.

⁴Letter from E. Robert Anderson to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (January 13, 2020).

⁵Letter from E. Robert Anderson to Shannon Barnaby, Assistant Attorney General, Public Access Bureau (January 13, 2020).

⁶[REDACTED] reply to this office alleged that the Board may have held improper meetings prior to the November 20, 2019, meeting to discuss her removal and the appointment of Mr. Hollis. However, [REDACTED] did not raise this allegation in her Request for Review, and therefore, it is outside of the scope of this determination.

⁷MERRIAM-WEBSTER DICTIONARY, <https://www.merriam-webster.com/dictionary/status> (last visited December 17, 2020).

⁸Edgar County Housing Authority, Board of Trustees, Regular Meeting, Agenda Item 9 (November 20, 2019).

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However, the Board's reference to the status of the executive director in this agenda item was too vague and imprecise to provide any meaningful notice to the public that the Board might take action to appoint a new individual to the Authority's executive director position. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 48630, issued August 31, 2017, at 3-4 (agenda items "Action Regarding Executive Session Issues" and "Personnel- Section 2 (c) (1)" did not provide general subject matter of vote to appoint village administrator). A member of the public reading the agenda in advance of the Board's November 20, 2019, meeting, would not have had sufficient notice that the Board planned to vote on that appointment. Accordingly, this office concludes that the Board violated section 2.02(c) of OMA during its November 20, 2019, meeting by voting to appoint Mr. Hollis as the interim-executive director for the Authority without having listed the general subject matter of that final action on the meeting agenda.

The Board's response to the Request for Review stated that Mr. Hollis was no longer the Authority's executive director as of December 26, 2019. Therefore, although there is no remedial action that could rectify this violation, this office reminds the Board that meeting agendas must set forth the main elements of all items on which the Board intends to take final action, and to otherwise comply with all of the requirements of OMA.

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 questions, you may contact me at sbarnaby@atg.state.il.us.

Very truly yours,

[REDACTED]
SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
Mr. E. Robert Anderson
Anderson Law Offices
1204 North Main Street
P.O. Box 10
Paris, Illinois 61944-0010
alo@robandersonlaw.com