



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 8, 2020

Via electronic mail

Mr. Kirk Allen



kirk@illinoisleaks.com

Via electronic mail

The Honorable Deborah Frank Feinen

Mayor

City of Champaign

102 North Neil Street

Champaign, Illinois 61820

deb.feinen@champaignil.gov

RE: OMA Request for Review – 2020 PAC 62712

Dear Mr. Allen and Ms. Feinen:

This letter 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 that follow, the Public Access Bureau concludes that the City Council of the City of Champaign (City Council) did not violate the requirements of OMA by not providing the public with at least 48 hours' advance notice of a meeting that was necessitated by a *bona fide* emergency.

On April 22, 2020, Mr. Kirk Allen submitted a Request for Review to the Public Access Bureau alleging that the City Council violated OMA by not providing at least 48 hours' advance notice of its March 13, 2020, emergency meeting. Mr. Allen argued that there was no *bona fide* emergency in the City that could have excused the City Council from the standard meeting notice requirement of at least 48 hours.

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On April 28, 2020, this office forwarded a copy of the Request for Review to the City Council and requested a copy of the notice, agenda, and minutes (in draft form if necessary, for this office's confidential review) of the March 13, 2020, meeting and a written answer to Mr. Allen's allegation that the City Council violated OMA by posting the agenda less than 48 hours in advance of the meeting absent a *bona fide* emergency. On May 4, 2020, this office received the City Council's response. On May 7, 2020, this office forwarded a copy of the City Council's response to Mr. Allen. On May 17, 2020, this office received Mr. Allen's reply.

DETERMINATION

OMA provides that it is the "public policy of this State that its citizens shall be given 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 2018). With respect to emergency meetings, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2018)) provides:

Public notice of any special meeting except a meeting held in the event of a bona fide emergency, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting[.] * * *
Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section.^[1]

In its response to this office, the City Council stated that Mayor Deborah Frank Feinen issued an emergency declaration regarding the COVID-19 pandemic on March 12, 2020, in which she called for an emergency meeting to be held the next day. The City Council noted that three days prior, on March 9, 2020, Governor J.B. Pritzker issued a "Gubernatorial Disaster Proclamation" declaring that COVID-19 posed a "public health emergency" and invoking the emergency powers in the Illinois Emergency Management Agency Act (20 ILCS 3305/1 *et seq.*

¹Correspondingly, section 2.02(b) of OMA (5 ILCS 120/2.02(b) (West 2018)) provides:

The body shall supply copies of the notice of its regular meetings, and of the notice of any special, emergency, rescheduled or reconvened meeting, to any news medium that has filed an annual request for such notice. Any such news medium shall also be given the same notice of all special, emergency, rescheduled or reconvened meetings in the same manner as is given to members of the body provided such news medium has given the public body an address or telephone number within the territorial jurisdiction of the public body at which such notice may be given.

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(West 2018)).² The City Council asserted that it provided the public with notice of the meeting as soon as was practicable after Mayor Feinen's emergency declaration at 4:30 p.m. on March 12, 2020, by posting notice at the City Building at an unspecified time and issuing a press release at 5:30 p.m. The City Council stated that notice of the meeting was also posted on the City's website at that time, and that a member of the news media and members of the public were able to attend the meeting. The City Council argued that the emergency declarations from both Mayor Feinen and Governor Pritzker that the COVID-19 pandemic that existed as of March 12, 2020, created a *bona fide* emergency for the City.

In his reply, Mr. Allen argued that the City Council provided no evidence that the City was experiencing an emergency as of March 12, 2020, because it had no COVID-19 cases yet. Mr. Allen questioned why, if the Gubernatorial Disaster Proclamation was the basis for the Mayor's emergency declaration, the City Council waited three days after it was issued to announce an emergency meeting. In any event, he disputed that an emergency jeopardizing public health and safety existed at the time the proclamation was issued and argued that the actions of the State of Illinois and the Illinois Emergency Management Agency "have nothing to do with what is taking place in the City of Champaign."³ Mr. Allen additionally referenced a portion of a sentence from a report to the City Council dated March 13, 2020, in which the city manager explained the background and ramifications of a bill that would implement the mayor's emergency declaration. In examining the alternative of not passing the bill, the city manager stated that "[t]he City Council could delay action on the ordinance and wait until the situation presented a clear picture of the full extent of the nature of the emergency."⁴ Mr. Allen argued that this language reflects that there was no true emergency in the City as of March 12, 2020.

It is undisputed that the City Council did not provide at least 48 hours' advance notice of its March 13, 2020, meeting as required by section 2.02(a) of OMA, unless the meeting was "held in the event the event of a bonafide emergency." OMA does not define the phrase "bonafide emergency," and no Illinois reviewing court has addressed the issue of what constitutes a *bona fide* emergency for purposes of section 2.02(a). Yet, an "emergency" is defined as "an *unforeseen* combination of circumstances or the resulting state that calls for *immediate* action." (Emphasis added.) Webster's Third New International Dictionary, 741 (1993).

²Gubernatorial Disaster Proclamation (March 9, 2020), *available at* <https://www2.illinois.gov/sites/gov/Documents/CoronavirusDisasterProc-3-12-2020.pdf> (last visited June 5, 2020).

³E-mail from Kirk Allen to the Public Access Bureau (May 17, 2020).

⁴City of Champaign, Report to City Council from Dorothy Ann David, City Manager (March 13, 2020), at 3.

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Based on this definition, the Public Access Bureau has previously determined that "**unanticipated circumstances** requiring immediate action that would justify providing less than 48 hours' notice []" are necessary for a meeting to qualify as one held in the event of a *bona fide* emergency. (Emphasis added.) Ill. Att'y Gen. PAC Req. Rev. Ltr. 23656, issued May 31, 2013, at 4. In that matter, this office rejected a public body's assertion that an account deficit that could have resulted in the public body failing to meet payroll constituted a "*bona fide* emergency" under section 2.02(a), partly because the "situation that precipitated" the meeting "was clearly foreseeable." Ill. Att'y Gen. PAC Req. Rev. Ltr. 23656, at 4; *see also River Road Neighborhood Ass'n v. South Texas Sports*, 720 S.W.2d 551, 557 (Tex. App. 1986) ("The mere necessity for quick action does not constitute an emergency where the situation calling for such action is one which reasonably should have been anticipated.").

This office concludes that the circumstances surrounding the COVID-19 pandemic as of March 12, 2020, entailed a *bona fide* emergency in the City that was sufficient to justify an emergency City Council meeting with less than 48 hours' notice. On that date, public bodies across the State were taking swift measures to react to the COVID-19 pandemic in light of its rapid spread and devastating impact. The uncertainty and severity involved in the pandemic presented unanticipated circumstances warranting immediate action. Even if the City did not have any active COVID-19 cases as of March 12, 2020, the potential for an outbreak of a fatal, highly communicable disease warranted emergency preparations. Further, the language from the city manager's report to the City Council does not support Mr. Allen's arguments; the report as a whole is clear that the pandemic created an emergency for the City, and the referenced language simply addresses the possibility of waiting until there was a *more comprehensive* understanding of the emergency. Under these unprecedented circumstances, this office concludes that the City Council did not violate OMA by holding an emergency meeting with less than 48 hours' advance notice.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me by mail at the Chicago address listed on the first page of this letter, by phone at (312) 814-4461, or by e-mail at jsternecky@atg.state.il.us. This letter serves to close this file.

Very truly yours,



JANE STERNECKY
Assistant Attorney General
Public Access Bureau