



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 22, 2022

Via electronic mail

The Honorable Scott A. Pierce
Member, Board of Trustees
Village of Antioch
[REDACTED]

Via electronic mail

The Honorable Scott J. Gartner
Mayor
Village of Antioch
874 Main Street
Antioch, Illinois 60002
sgartner@antioch.il.gov

RE: OMA Request for Review – 2020 PAC 66200

Dear Trustee Pierce and Mayor Gartner:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, the Public Access Bureau concludes that the Village of Antioch (Village) Board of Trustees (Board) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2020)) during its December 14, 2020, meeting.

On December 17, 2020, Trustee Scott Pierce submitted a Request for Review alleging that the Board's December 14, 2020, meeting agenda did not adequately identify the general subject matter of the Board's action to find him and two other Village trustees in violation of the Village's Code of Behavior and Conduct for Village Elected and Appointed Officials (Code).¹ On December 30, 2020, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to the allegations, together with copies of the agenda, meeting minutes (draft form, if necessary), and a verbatim recording of the December 14, 2020, meeting, if such a recording existed. On January 26, 2021, the Board

¹Village of Antioch Code of Behavior and Conduct for Village Elected and Appointed Officials, Resolution No. 20-16, passed March 9, 2020.

submitted a written response and furnished the requested meeting materials. On the same date, this office forwarded a copy of the Board's response to Trustee Pierce with an opportunity to reply; he submitted a reply on January 28, 2021.

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 (5 ILCS 120/2.02(c) (West 2020)) 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." (Emphasis added.) The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, effective January 1, 2013, adding section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [the public body] 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. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

Item VI.14 of the December 14, 2020, meeting agenda identifies the matter to be considered as "[d]iscussion of retaining independent counsel due to the ethical recusal of the Village Attorney on a matter."² Trustee Pierce stated that the inclusion of this agenda item arose as a result of a complaint filed by a citizen against three trustees, including him, for alleged violation of the Code.³ The draft meeting minutes and the verbatim recording of the meeting document that pursuant to this agenda item, the Mayor⁴ read a statement in which he notified the Board of the formal complaint. Then Mr. Robert Long, the Village attorney, stated that he would

²Village of Antioch, Lake County, Illinois, Village Board of Trustees; Regular Meeting, Agenda Item VI.14 (December 14, 2020).

³Letter from Scott A. Pierce, Village of Antioch, Trustee, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (December 16, 2020) at 1. Although Mr. Pierce did not specifically identify the exact nature of the violation, a review of the draft minutes and verbatim recording of the meeting indicates that the alleged violation was of the Code.

⁴The Mayor at the time of the December 14, 2020, meeting was the Honorable Lawrence Hanson.

recuse himself from investigating the complaint as it would be inappropriate for him, as Village attorney, to investigate three of its Board members. The agenda item properly identified these discussions.

However, there is nothing in the wording of Agenda Item IV.14 or in any other agenda item that provided notice to the public that the Board might consider the merits of the underlying complaint and take action on that complaint. The draft meeting minutes and the verbatim recording show that the Board heard statements from the complainant and the trustees, and discussed whether three of the trustees violated the Code. The Board then considered three separate motions and voted to find that each of the three trustees violated the Code.⁵ A member of the public reading the agenda before the Board's December 14, 2020, meeting would not have had advance notice that the Board planned to make a final determination as to whether three of its trustees violated the Code.

The Board argues that section 2.02(c) of OMA requires an agenda set forth the general subject matter only of each "resolution or ordinance that will be the subject of final action at the meeting,"⁶ and that "a mere simple motion by one trustee to call into question the behavior of three of his colleagues" does not constitute "final action."⁷ The Board further argues that the Board did not pass a resolution or ordinance, and that the Village's Ethics Ordinance "requires a formalized process, including a complaint, a formal hearing, and a final finding[.]" but that no such hearing was held.⁸

OMA does not define "final action," and no Illinois court has precisely defined that term. Generally, however, final action can be said to occur when a vote in open session resolves a matter and stands on its own, rather than serving as an interim, non-dispositive step in a broader decision-making process. *Compare Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶74, 77 N.E.3d 625, 637-38 (2017) (vote to approve separation agreement in open session is final action) with *Gosnell*, 179 Ill. App. 3d at 176 (request for mediation was a component of public body's process of reaching final action on a union contract, rather than final action in and of itself.).

⁵The Board provided for this office's confidential review a copy of the draft minutes of the December 14, 2020, meeting. An Assistant Attorney General in the Public Access Bureau reviewed the Village's website, but was not able to locate a copy of the approved minutes from that meeting.

⁶5 ILCS 120/2.02(c) (West 2020).

⁷Letter from Robert J. Long, Village Attorney, to Grace Angelos, Assistant Attorney General (January 26, 2021) at 5-6.

⁸Letter from Robert J. Long, Village Attorney, to Grace Angelos, Assistant Attorney General (January 26, 2021) at 5-6.

The Board's characterization of the December 14, 2020, meeting downplays the Board's actions that evening. As described above, the Board not only gave lengthy consideration of the citizen complaint, but also heard a motion, accepted a second of that motion, and then took a vote to approve a motion stating that a trustee violated the Code. The Board then repeated that procedure two more times, for the other two trustees. There is no indication that this was a tentative or preliminary consensus—each of these votes appear to have resolved the question of whether each of the trustees violated the Code. To the extent the presentations made during the meeting and the Board's deliberation of those findings prior to its votes did not satisfy the requirement in the Village Code that it hold a "formal hearing," the Board's failure to do so does not mean that its three votes did not constitute "final action" for purposes of OMA. In arguing that its vote was not a "final action," the Board also emphasizes that none of the trustees were censured or otherwise sanctioned as a result of its findings. However, the Code does not require the imposition of sanctions for all findings of violations.⁹ Moreover, a finding that a public official violated the Code is a dispositive step under the Code; the lack of consequence or penalty following that finding does not render the finding any less of a "final action" under OMA.

Under these circumstances, this office concludes that the Board violated section 2.02(c) of OMA in connection with its December 14, 2020, meeting by voting to find three of its trustees in violation of its Code without having listed the general subject matter of those final actions on the meeting agenda. To remedy this violation, this office requests that the Board reconsider and revote on the matter regarding the complaint after providing proper advance notice for those actions, if it wishes to maintain this finding against the three trustees.

Finally, the Public Access Counselor's authority is limited to resolving disputes concerning OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2020)). To the extent Trustee Pierce's Requests for Review alleges violations of laws other than FOIA or OMA, the Public Access Counselor does not have authority to review those allegations.

⁹Section 1 of the Code states in pertinent part "[i]f there is deliberate violation of principals and guidelines set out herein, a Public Official **may be subject to sanctions.**" (Emphasis added).

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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. Please contact me at (312) 814-4467 or the Chicago address listed on the first page if you have any questions.

Very truly yours,



GRACE ANGELOS
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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