



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 19, 2022

Via electronic mail
The Honorable Diane Galante
Trustee, Village of Tinley Park
[REDACTED]

RE: OMA Request for Review – 2022 PAC 73450

Dear Ms. Galante:

Pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2020)), the Public Access Bureau has received your Request for Review alleging that the Board of Trustees (Board) of the Village of Tinley Park improperly excluded you as a Village Trustee from a closed session on September 6, 2022. This office has determined that no further action is warranted in this matter.

In your Request for Review, received September 9, 2022, you allege that the Board has continued to exclude you from certain closed session discussions, referencing your previous Request for Review concerning the same subject (2022 PAC 72721). You claim that this new Request for Review warrants a different outcome from the determination that no further action was warranted in the previous matter,¹ because this time you make your allegation against the Board as a whole, rather than just Mayor Glotz. The previous determination, however, also explained that "[t]he provisions of OMA protect the public's right to know about how public bodies conduct public business; OMA generally does not concern internal disputes between the members of a public body."² The determination further explained that, as a practical matter, circumstances such as a conflict of interest may arise in which a public body could properly exclude a member from a closed session.³ Nonetheless, you allege:

¹Ill. Att'y Gen. PAC Req. Rev. Ltr. 72721, issued July 25, 2022.

²Ill. Att'y Gen. PAC Req. Rev. Ltr. 72721, issued July 25, 2022, at 2.

³Ill. Att'y Gen. PAC Req. Rev. Ltr. 72721, issued July 25, 2022, at 2 (citing Ill. Att'y Gen. Op. No. 00-004, issued March 7, 2000, at 3-4).

On September 6, 2022, the Village Board excluded me from participation in the "closed meeting" portion of the Village Board meeting. When I asked under what authority I was to be excluded and insisted that a vote be taken to approve removing me from Executive Session, the mayor and the other five trustees got up, and left the room for a private meeting, and had the Village Attorney stationed at the door. He told me I would not be allowed to participate in the operations of government. I believe he excludes me from participation in my required duties because of our philosophical/political differences.^[4]

You have not indicated which provision of OMA you believe this course of conduct violated. Rather, you argue that OMA "obviously assumes the right to participation by elected public officials at the meetings of the public body."⁵ You contend that section 2.06(f) of OMA (5 ILCS 120/2.06(f) (West 2021 Supp.)) makes this clear, claiming:

It would defy logic and the intent of the statute to infer any authority on the part of the mayor to exclude me from participation in any authorized "closed session" considering that the statute mandates that I have access to the minutes of any portions of an open meeting held as a "closed session".^[6]

The legal issue you have raised that is subject to review by this office is not the mayor's authority to exclude you from the closed session, but whether the provisions of OMA guaranteed you the right to attend the closed session such that the Board violated OMA by excluding you. Section 2.06(f) of OMA provides, in relevant part:

Minutes of meetings closed to the public shall be available only after the public body determines that it is no longer necessary to protect the public interest or the privacy of an individual by keeping them confidential, except that duly elected officials or appointed officials filling a vacancy of an elected office in a public body shall be provided access to minutes of meetings closed to the

⁴Letter from Diane Galante, Trustee, Village of Tinley Park, to Leah [Bartelt], Public Access Counselor, Office of the Attorney General (September 9, 2022), at 1.

⁵Letter from Diane Galante, Trustee, Village of Tinley Park, to Leah [Bartelt], Public Access Counselor, Office of the Attorney General (September 9, 2022), at 2.

⁶Letter from Diane Galante, Trustee, Village of Tinley Park, to Leah [Bartelt], Public Access Counselor, Office of the Attorney General (September 9, 2022), at 2.

public. Access to minutes shall be granted in the public body's main office or official storage location, in the presence of a records secretary, an administrative official of the public body, or any elected official of the public body. No minutes of meetings closed to the public shall be removed from the public body's main office or official storage location, except by vote of the public body or by court order.

By its plain language, section 2.06(f) grants duly elected officials access to the public body's past meeting minutes in a controlled process. Yet, it is conceivable that access could be restricted if disclosing minutes to a member of a public body would defeat the purpose of a closed session discussion authorized by OMA. See *Phoenix Bond & Indemnity Co. v. Pappas*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose "or yield an absurd or unjust result."). For instance, in *Hamilton v. Town of Los Gatos*, 213 Cal. App. 3d 1050, 261 Cal. Rptr. 888 (6th Dist. 1989), a city council member sought access to the recording of a closed session discussion between the other members of the city council and legal counsel, from which he was absent due to a conflict of interest. Similar to section 2.06(f) of OMA, section 54957.2 of California's open meetings statute, the Brown Act (Cal. Gov. Code § 54957.2 (West 1988)) provided that access to closed session recordings "shall be available only to members of the legislative body." Although the city council member argued that he was entitled to inspect the recording pursuant to this provision, the court concluded that he was properly denied access pursuant to ethics laws. *Hamilton*, 213 Cal. App. 3d at 1059, 261 Cal. Rptr. at 893. The court explained:

In the case where a council member is disqualified from participation in a decision because of a financial conflict of interest, it does not appear to be in the best interest of the town to have that council member present at discussions between the council and its attorney concerning that decision. The attorney, as well as the other council members, might not feel as free to disclose everything necessary when a "biased" public official were present. The council members and attorney might feel similarly inhibited where they are aware that a "biased" council member can later obtain a tape recording of the attorney-council discussion. The town might thus be denied effective assistance of counsel. *Hamilton*, 213 Cal. App. 3d at 1059, 261 Cal. Rptr. at 893.

Whether you have a conflict of interest, financial or otherwise, that would preclude you from participating in certain closed session discussions between the rest of the Board and the Board's attorney is, of course, beyond the scope of this office's review. It suffices to state that neither section 2.06(f) of OMA nor any other provision of OMA grants a member of

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a public body an inviolable right to participate in every closed session discussion regardless of the circumstances. Because your allegation, though related to OMA, is outside the scope of that statute, this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have any questions, please contact me at joshua.jones@ilag.gov.

Very truly yours,



JOSHUA M. JONES
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Michael Glotz
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