



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 12, 2023

Via electronic mail



RE: OMA Request for Review – 2023 PAC 76838

Dear :

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2020)). For the reasons set forth below, the Public Access Bureau concludes that no further action in this matter is warranted.

On June 5, 2023, this office received your Request for Review in which you alleged that the Township High School District 214 (District) Board of Education (Board) did not have a valid basis for holding an emergency meeting on April 6, 2023, at 8:30 a.m. to approve the expenditure of funds to repair storm damage on the roof of one of the District's high schools. You noted that the Board posted the notice and agenda for the April 6, 2023, emergency meeting on April 5, 2023.

"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). 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 anyway." 5 ILCS 120/1 (West 2020). Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) provides that "[p]ublic 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[.]" (Emphasis added.)

OMA does not define the phrase "bona fide emergency," and no Illinois appellate court has addressed the issue of what constitutes a *bona fide* emergency for purposes of section

2.02(a). An "emergency" is defined as "an **unforeseen** combination of circumstances or the resulting state that calls for **immediate** action."¹ (Emphasis added.) 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. 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.").

The materials you submitted with your Request for Review indicated that on Friday, March 31, 2023, a storm damaged the high school roof. It appears that a roof contractor inspected the damage on Monday, April 3, 2023; on Tuesday, April 4, 2023, at 5:38 p.m., the contractor e-mailed a proposed plan and an estimate to complete the emergency repairs. The contractor estimated the cost would be between \$125,000-\$130,000 and explained that work needed to begin in the morning on Thursday, April 6, 2023, "to review staging and the work area. * * * Roofing site mobilization is planned for 4:00pm on Thursday and the goal is to be off the roof by the time it gets dark."² The roofing removal and replacement work was scheduled to begin on Friday, April 7, 2023, because that was a scheduled non-attendance day for the District. According to an e-mail from the District's Associate Superintendent of Administrative Services (Associate Superintendent) provided with your Request for Review, on Wednesday, April 5, 2023,

[t]he business office informed the operations team that a special board approval would be necessary due to the amount of funding needed for the emergency repairs. Additionally, legal counsel was consulted to ensure we complied with applicable laws. Due to the immediate and emergency nature of the repair, the emergency expenditure was found to be exempt from public bidding pursuant to Section 5/10 – 20.21 (xiv) of the School Code. The Emergency

¹WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 741 (1993).

²E-mail from Jay Tulley, Riddiford Roofing Co., to Aneta [Mistak] (April 4, 2023).

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Board meeting was posted as soon as a quorum, place and time was secured in accordance with the Open Meetings Act.^[3]

On Wednesday, April 5, 2023, the Board posted notice for an April 6, 2023, emergency meeting to approve the funds to pay for the roof repair. The meeting occurred on April 6, 2023, at 8:30 a.m. and the Board approved the expenditure of funds.⁴

Referencing the e-mail provided by the Associate Superintendent, you allege:

It is clear that, as of Wednesday, April 5th, there was not sufficient time for a 48 hour notice prior to starting work on Thursday. However, by Monday or at the latest Tuesday, **there was enough time**. I do not find it credible for [the Associate Superintendent] to list as a justification for the delay, the need for the operations team to be informed by the business department, about basic regulations for approving contracts. (Emphasis in original.)^[5]

While you acknowledge that the District did not know the cost of the roof repair until Tuesday evening, you appear to argue that the District squandered time with unnecessary administrative delays. You imply that the District and Board should have anticipated that the Board would be required to approve the costs and therefore, should have posted a meeting with the usual 48-hour notice period.

Based on the information provided in your Request for Review, the March 31, 2023, storm created an emergency need for extensive roof repairs.⁶ The District appears to have acted quickly to contact a contractor to inspect the damage on Monday, April 3, 2023; on Tuesday, April 4, 2023, it learned the extent of the damage, the cost, and that work needed to

³E-mail from Chris Uhle, Associate Superintendent of Administrative Services, Township High School District 214, to [Tim] Burns (April 13, 2023).

⁴Township High School District 214, Board of Education, Emergency Meeting, April 6, 2023, Minutes 1.

⁵E-mail from [REDACTED] to [Public Access] Staff (June 3, 2023).

⁶According to the April 6, 2023, emergency meeting minutes, the contractor "said a patch repair will not work this time and a temporary roof needs to be installed to minimize further detriment to the facility. The gravel, membrane, and insulation will be removed and a new temporary roof will be installed. Approximately 8,000 square feet of roof will be replaced." Township High School District 214, Board of Education, Emergency Meeting, April 6, 2023, Minutes 1.

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begin on Thursday, April 6, 2023. These events were unanticipated and required the Board's action, but it was not unreasonable for the Board to have waited to post notice for a meeting until it had details from the contractor on the estimated cost and work plan. Once the District had the details of the plan that required Board approval, there were fewer than 48 hours before the contractor had to begin work; therefore, it was essential for the Board to have called an emergency meeting to approve the funding. There is no indication that the District or the Board failed to act diligently and that lack of diligence created the situation requiring the emergency meeting. Accordingly, under the exigent circumstances presented by the March 31, 2023, storm and the short period of time available to repair the resulting roof damage, this office concludes that the Board did not violate OMA by calling an emergency meeting for April 6, 2023, at 8:30 a.m. Because your Request for Review did not present a summary of facts to support an allegation that the Board violated OMA, this office will take no further action on this matter.⁷

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

Very truly yours,

[REDACTED]
LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
The Honorable Alva Kreutzer
President, Board of Education
Township High School District 214
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Arlington Heights, Illinois 60005
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⁷ 5 ILCS 120/3.5(a) (West 2020) ("The request for review * * * must include a summary of the facts supporting the allegation.").