



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 4, 2012

PUBLIC ACCESS OPINION 12-008
(Request for Review 2012 PAC 18008)

OPEN MEETINGS ACT:
Meeting at Private Residence is Not
Convenient and Open to the Public

Mr. Louis J. Netemeyer
2204 Monterey Drive
Belleville, Illinois 62221

Ms. Peggy K. Burke
Superintendent
Whiteside School District No. 115
111 Warrior Way
Belleville, Illinois 62221

Dear Mr. Netemeyer and Ms. Burke:

This binding opinion is issued pursuant to section 3.5(c) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(c) (West 2010)). For the reasons set forth below, we find that the Board of Education (Board) of Whiteside School District No. 115 (District) failed to comply with OMA on December 21, 2011, by holding a meeting in a private residence.

BACKGROUND

On November 30, 2011, the Board held a special meeting at Whiteside Middle School to determine the District's proposed 2011 tax levy.¹ Because the proposed 2011 aggregate levy estimate exceeded 105% of the 2010 levy, the Board scheduled a hearing, as

¹Letter from Peggy K. Burke, Superintendent, Whiteside School District No. 115, to Lindsay LaVine, Assistant Attorney General, State of Illinois (January 31, 2012).

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required by section 18-70 of the Property Tax Code (35 ILCS 200/18-70 (West 2010)), for December 15, 2011, to be held in conjunction with the Board's regular meeting.

Section 18-60 of the Property Tax Code (35 ILCS 200/18-60 (West 2010)), however, provides that a taxing district cannot adopt its aggregate levy less than 20 days after it has estimated its anticipated taxes. Therefore, at its December 15, 2011, meeting, again held at Whiteside Middle School, the Board announced that it would hold a special meeting on December 21, 2011, to adopt the 2011 levy "at a time and place to be announced[.]"²

Ultimately, the Board scheduled the special meeting for December 21, 2011, at 7:30 p.m. at 42 Coral Drive in Belleville,³ the private residence of Superintendent Peggy Burke. Notice of the meeting and its location were posted on the District's website, at the District's office, and at Whiteside Middle School. According to Ms. Burke, the reason the meeting was held at her home was that all of the custodians had worked during the day and the school would be closed.⁴ She states that the meeting in her home was open to the public and she posted her address for that purpose.⁵

On December 21, 2011, at 7:30 p.m., the Board convened at Ms. Burke's residence and adopted the levy. The meeting adjourned at 7:40 p.m.⁶

On January 6, 2012, the Public Access Bureau received a Request for Review from Mr. Netemeyer alleging that the Board improperly met at a private residence outside the school district boundaries and challenging the legality of the Board's adoption of the 2011 tax levy.⁷ This office forwarded a copy of Mr. Netemeyer's Request for Review to the District on January 20, 2012, and asked for a written response to Mr. Netemeyer's allegation, specifically: (1) whether members of the school board held a gathering or meeting on December 21, 2011, to discuss a tax levy or any other public business; and (2) if a meeting was held, a description of the

²Letter from Peggy K. Burke, Superintendent, Whiteside School District No. 115 to Lindsay LaVine, Assistant Attorney General, State of Illinois (January 31, 2012).

³Ms. Burke's residence is located approximately four blocks outside the District's borders.

⁴Although Ms. Burke's letter did not state as much, the District's website indicates that December 21, 2011, was the first day of the District's winter break. <http://www.whiteside.stclair.k12.il.us>.

⁵Letter from Peggy K. Burke, Superintendent, Whiteside School District No. 115 to Lindsay LaVine, Assistant Attorney General, State of Illinois (January 31, 2012).

⁶Letter from Peggy K. Burke, Superintendent, Whiteside School District No. 115 to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (January 31, 2012).

⁷Email from Louis J. Netemeyer to AG_Consumer@atg.state.il.us (December 30, 2011).

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matters discussed and any final action that was taken. The Public Access Bureau also asked the District to provide copies of any minutes, draft minutes, recordings, or other records that were created during the meeting and to indicate whether an agenda was posted for the meeting and, if so, to provide a copy of the agenda.⁸

On January 31, 2012, Ms. Burke responded with a letter explaining the circumstances surrounding the December 21, 2011, meeting. Ms. Burke's response included copies of the following District documents:

November 30, 2011, special board meeting agenda and minutes;

Certificate of publication for December 15, 2011, levy hearing;

December 15, 2011, meeting agenda and minutes from public levy hearing and regular meeting;

December 21, 2011, special meeting agenda and minutes;

Resolution to levy tax for lease of educational facilities or computer technology;

Resolution for tax levy; and

Undated screen shot of the District website showing links to agendas and minutes of meetings listed above.⁹

On February 7, 2012, this office forwarded a copy of the District's response to Mr. Netemeyer.¹⁰ Mr. Netemeyer did not reply.

ANALYSIS

Section 2.01 of OMA provides, in pertinent part, that "[a]ll meetings required by [the] Act to be public shall be held at specified times and places which are *convenient* and *open*

⁸Letter from Lindsay H. LaVine, Assistant Attorney General, Public Access Bureau, to Peggy Burke, Superintendent, Whiteside School District No. 115 (January 20, 2012).

⁹Letter from Peggy K. Burke, Superintendent, Whiteside School District No. 115 to Lindsay LaVine, Assistant Attorney General, State of Illinois (January 31, 2012).

¹⁰Letter from Lindsay H. LaVine, Assistant Attorney General, Public Access Bureau, to Mr. Louis Netemeyer (February 7, 2012).

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to the public." (Emphasis added.) 5 ILCS 120/2.01 (West 2010). OMA does not define "open" or "convenient." Undefined statutory terms must be given their plain and ordinary meaning. *Exelon Corp. v. Dept. of Revenue*, 234 Ill. 2d 266, 275 (2009) (finding that where a statute fails to specifically define a word, a court may use a dictionary to determine the word's plain and ordinary meaning). "Open" in the context of a meeting is defined as "not restricted to a particular group or category of participants." Merriam-Webster Collegiate Dictionary 868 (11th ed. 2004). See *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 358 (4th Dist. 2003). "Convenient" means "suitable" or "proper." Merriam-Webster, at 272.

In scheduling the December 21, 2011, meeting, the District complied with the notice requirements in OMA. In addition, there is no indication that the District intended to prevent members of the public from attending the December 21, 2011, meeting or that it was not open to any person who wished to attend. Section 2.01 of OMA, however, also requires that the location of a meeting must be convenient "not merely to members of the public who show up for the meeting but to the 'public' as a whole." *Gerwin*, 345 Ill. App. 3d at 362. The *Gerwin* court concluded that the concept of public convenience implied "a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362. The court also found that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous [sic] place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. In such a situation, the court noted that "an open meeting in an inconvenient place violates the Act." *Gerwin*, 345 Ill. App. 3d at 359.

The records provided do not reflect whether any members of the public attended the December 21, 2011, special meeting. However, the fact that the meeting was held at a private residence, instead of at a public location, could reasonably be expected to deter citizens from attending the gathering. Citizens may have felt uncomfortable going to the school superintendent's home to attend the meeting. In this sense, the superintendent's private residence was clearly "ill-suited" for a public meeting.

In her response, Ms. Burke stated that the scheduling of the meeting at her home was necessary because "the school building would be closed that evening, with all custodians working the day shift [.]"¹¹ The District has not demonstrated, however, that there were no options at its disposal to comply with OMA. See *Argo High Sch. Council of Local 571 v. Argo Cmty. High Sch. Dist.*, 163 Ill. App. 3d 578, 583 (1st Dist. 1987). The District could, for example, have asked a custodian or other personnel to open the building or could have held the meeting at the school during the time that custodians were working. The District could have

¹¹Letter from Ms. Peggy Burke, Superintendent, Whiteside School District No. 115 to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (January 31, 2012).

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held the meeting at another public location, such as a community center or library, or rescheduled the meeting for another date and time. Any of these options could have made the meeting more reasonably accessible to the public.

Accordingly, we conclude that by holding the meeting at the superintendent's residence, the District failed to comply fully with section 2.01 of OMA. Because of this conclusion, it is not necessary to address or to determine whether holding the meeting outside the territorial boundaries of the public body violated OMA.

FINDINGS AND CONCLUSIONS

After full review and giving due consideration to the arguments of the parties, the Public Access Counselor's findings, and the applicable law, the Attorney General finds that:

- 1) On December 21, 2011, the Board of Education of Whiteside School District No. 115 held a special meeting at the superintendent's private residence.
- 2) On January 6, 2012, the Public Access Bureau received Mr. Netemeyer's Request for Review alleging that the District violated OMA by improperly meeting at a private residence outside the school district boundaries, and challenging the legality of the Board's adoption of its 2011 aggregate tax levy. Mr. Netemeyer's Request for Review was timely filed and otherwise complies with section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2010)).
- 3) The Attorney General properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA, until April 4, 2012 (5 ILCS 120/3.5(e) (West 2010)). Therefore, the Attorney General may properly issue a binding opinion with respect to Mr. Netemeyer's Request for Review.
- 4) Although it provided the required notice of the meeting, the District, as a matter of law, failed to comply fully with section 2.01 of OMA by holding the December 21, 2011, special meeting at a location that was not convenient and open to the public.

Therefore, the Attorney General directs the District to take appropriate action to comply with this opinion by scheduling, posting, and conducting its future meetings in full compliance with section 2.01 of OMA. Under section 3.5(e) of OMA, the District shall either take necessary action as soon as practical to comply with the directive of this opinion or shall initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2010)).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101

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et seq. (West 2010). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Louis Netemeyer as defendants. *See* 5 ILCS 120/7.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General