



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 16, 2013

PUBLIC ACCESS OPINION 13-002
(Request for Review 2013 PAC 22987)

OPEN MEETINGS ACT:
Taking Final Action on Matters
Not Included in Agenda

Mr. John Wizgird
3615 North Pine Grove Avenue
Chicago, Illinois 60613

Mr. Bryan Traubert, President
Board of Commissioners
Chicago Park District
541 North Fairbanks
Chicago, Illinois 60611

Dear Mr. Wizgird and Mr. Traubert:

This is a binding opinion issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2010)). For the reasons discussed below, this office concludes that the Chicago Park District Board of Commissioners (Board) violated OMA at its January 16, 2013, regular meeting, by taking final action to increase the fees for admission to the Art Institute of Chicago and the Museum of Science and Industry without providing public notice in its agenda that the Board would be considering the matter.

BACKGROUND

On January 17, 2013, the Public Access Bureau received a Request for Review submitted by Mr. John Wizgird complaining that the Board had voted at its January 16, 2013, meeting to increase the fees for admission to the Art Institute of Chicago and the Museum of

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Science and Industry,¹ although there was no reference to that subject in the meeting agenda.² On January 25, 2013, the Public Access Bureau forwarded a copy of the Request for Review to the Board and asked that the Board furnish this office with copies of its January 16, 2013, meeting agenda, notice, and minutes, and also provide a written explanation of the Board's action concerning the fee increase.³

On February 11, 2013, the First Deputy General Counsel for the Chicago Park District responded on behalf of the Board, and provided copies of the notice and the agenda for the January 16, 2013, meeting. In addition, Counsel provided copies of the notices and agendas for each of three committee meetings that were held on the morning of January 16, 2013, prior to the meeting of the full Board that afternoon. Other supporting documents furnished to this office included affidavits and e-mails concerning the Board's posting of the meeting notices and agendas for each meeting, a copy of Chapter 2 of the Chicago Park District Code, and copies of letters recommending the admission fee increases. The minutes of the Board meeting were not included in the response, however.

The Board's written response asserts that the notices and agendas for all committee meetings and the Board meeting were posted in accordance with the requirements of OMA. The written response further describes the meeting procedures as follows:

[T]he Board has regularly scheduled Meetings every month. * * *
The Meetings have a morning session and an afternoon session.
During the morning session the Board's Standing Committees meet to consider and discuss matters within their respective jurisdictions[.] * * * The Standing Committees may create reports and recommend that final action be taken at the Board Meeting in the afternoon session. During the afternoon session, the Board of Commissioners meets to consider the passage of ordinances, resolutions, or other matters requiring approval of the Board.

¹The Art Institute of Chicago and the Museum of Science and Industry are two of eleven museums under the jurisdiction of the Chicago Park District. See <http://www.museumsinthepark.org/>.

²E-mail from John Wizgird to Public Access Bureau, Office of the Attorney General (January 17, 2013).

³Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Bryan Traubert, President, Chicago Park District Board of Commissioners (January 25, 2013).

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Members of the public are allowed to attend the Committee and Board Meetings and may also sign up to speak[.]⁴

With respect to the fee increases, the Board asserted:

The Notice and Agenda for the Committee on Programs and Recreation states that the Committee would consider the authorization to change the general admission fees for the MSI [Museum of Science and Industry] and the AIC [Art Institute of Chicago] at 10:35am on January 16, 2013. The Committee on Programs and Recreation moved to recommend that such action be adopted by the Board of Commissioners. In the afternoon session [4:00 p.m. on January 16, 2013], the Board of Commissioners approved the fee increases by a unanimous vote (six yeas, and zero nays, one commissioner was absent, but a quorum was present).

* * *

Because the Notice and Agenda included the general subject matter to be considered by the Committee on Programs and Recreation, and because they were made available from January 11, 2013 through January 16, 2013, the Park District substantially complied with section 2.[0]2(c) of the OMA.⁵

On February 21, 2013, this office forwarded a copy of the Board's response to Mr. Wizgird.⁶ In his reply letter dated February 28, 2013, and submitted to this office by e-mail on March 1, 2013, Mr. Wizgird did not dispute that the agenda for the January 16, 2013, Board meeting was timely posted, but he reiterated that there was no reference in the agenda to possible action to increase the admission fees to the Art Institute or the Museum of Science and Industry.⁷

⁴Letter from Timothy M. King, First Deputy General Counsel, Chicago Park District, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 11, 2013).

⁵Letter from Timothy M. King, First Deputy General Counsel, Chicago Park District, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 11, 2013).

⁶Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to John Wizgird, (February 21, 2013).

⁷Letter from John Wizgird to Shari L. West, Assistant Attorney General, Public Access Bureau (February 28, 2013).

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The issue for determination is whether the Board's agenda provided adequate notice to the public that the Board would consider taking final action to raise the museum admission fees at its January 16, 2013, Board meeting.

ANALYSIS

The January 16, 2013, meeting agenda for the Committee on Programs and Recreation (Committee) sets out three items of business, including "Authorization to change the general admission fee for the Museum of Science and Industry" and "Authorization to change the general admission fee for the Art Institute of Chicago," plus one matter that is unrelated to this review.⁸ According to the January 16, 2013, meeting minutes summary posted on the Chicago Park District website,⁹ the Board took final action to increase the fees under a general agenda item entitled "Communications and Reports," and the subheading "Committee on Programs and Recreation."¹⁰ The agenda for the Board meeting does not expressly reference admission fees to the museums or any of the park district's facilities.

The public policy of this State, as declared in section 1 of OMA (5 ILCS 120/1 (West 2010)) is that "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." Further, section 2.02(a) of OMA (added by Public Act 97-827, effective January 1, 2013, to be codified at 5 ILCS 120/2.02(a)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." (Emphasis added.) Section 2.02(c) of OMA (added by Public Act 97-827, effective January 1, 2013, to be codified at 5 ILCS 120/2.02(c)), 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." The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, indicates that the amendment was intended to ensure that agendas provide to the public sufficiently descriptive advance notice of the matters upon which a public body may consider taking final action:

⁸Chicago Park District, Committee on Programs and Recreation, Agenda (January 16, 2013).

⁹Chicago Park District, Board of Commissioners, Documents, Board - Summary, *available at*: <http://www.chicagoparkdistrict.com/departments/board-of-commissioners/pdf-group-board-sidebar>.

¹⁰Chicago, Park District, Board of Commissioners, Documents, Board - Archive, Journal of Proceedings, Regular Meeting, January 16, 2013, pages 146 and 147, *available at*: http://www.chicagoparkdistrict.com/assets/1/23/January_16,_2013.pdf.

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[T]here was just no real requirement as to how specific they 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.

The Board's January 16, 2013, meeting agenda does not reflect that the "general subject matter" of admission fees for the Art Institute or the Museum of Science and Industry would be discussed or acted upon by the Board. The agenda item "Communications and Reports: Committee on Programs and Recreation," under which the Board approved the fee increases, does not suggest that the Board might consider taking final action with respect to increasing admission fees. Thus, the Board's agenda did not provide sufficient notice to comply with the requirements of section 2.02(c) of OMA.

The Board asserts, however, that because the Committee meeting agenda did include specific items relating to consideration of the proposed fee changes, the Board has "substantially complied" with section 2.02(c) of OMA. A committee of a public body is considered to be a separate public body for purposes of compliance with the requirements of OMA, including the section 2.02(a) requirement that it post "[a]n agenda for each regular meeting[.]" Section 2.02(c) expressly provides that "any 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." The Board does not provide support for its argument that the Committee's compliance with the agenda requirements of 2.02(c) satisfies the Board's independent obligations under that provision. The Board must comply with OMA's agenda requirements, including providing sufficient notice of the general subject matter of any resolution or ordinance upon which final action may be taken at the Board meeting, without requiring reference to other documents to determine what matters the Board might address.

Accordingly, this office concludes that the Board violated section 2.02(c) of OMA by taking final action on the museum admission fee increases during its January 16, 2013, meeting without including a description of the general subject matter of that action in the Board's meeting agenda.

The Board's response highlights an inherent problem arising out of the scheduling of committee and Board meetings for the same day. The Board's practice is for its standing committees to meet in the morning to consider matters within their respective jurisdictions. Under this practice, unless the Board's agenda anticipates that specific ordinances,

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resolutions, or other matters will be referred by the committees to the Board for final action, the requisite advance notice cannot be provided in order for the Board to act upon them consistently with section 2.02(c) in its afternoon session. This problem can be minimized by listing on the Board's agenda those matters which its committees will be considering in the morning sessions that are likely to be referred to the Board for final action. The Board is not obligated to take up every matter listed in its agenda. Accordingly, if it is anticipated that a committee may recommend action on a particular matter but ultimately does not, the fact that the Board has included consideration of the possible action as an item in its agenda does not in any way bind the Board to address the matter.

FINDINGS AND CONCLUSIONS

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

1) On January 17, 2013, the Public Access Bureau received a Request for Review from Mr. John Wizgird alleging that the Chicago Park District Board of Commissioners violated the Open Meetings Act during its January 16, 2013, meeting by taking final action to approve increases in admission fees to the Art Institute of Chicago and the Museum of Science and Industry, although the agenda did not include any reference to the consideration of admission fees.

2) Mr. Wizgird's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2010)). Therefore, pursuant to section 3.5(e) of OMA, the Attorney General may properly issue a binding opinion in response to Mr. Wizgird's Request for Review.

3) Based on the information we have been provided, the Chicago Park District Board of Commissioners took final action at its January 16, 2013, regular meeting to increase admission fees to the Art Institute of Chicago and the Museum of Science and Industry under an agenda item entitled "Communications and Reports: Committee on Programs and Recreation."

4) Pursuant to section 2.02(a) of OMA, the Board is required to post an agenda for each regular meeting at its principal office and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. Section 2.02(c) of OMA 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." The posted agenda for the Board's January 16, 2013, regular meeting did not generally or specifically reference the subject matter of fee increases.

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5) By taking final action to increase the admission fees without providing advance notice in its agenda that the Board would consider doing so, the Board violated section 2.02(c) of OMA.

In accordance with these findings of fact and conclusions of law, the Board is directed to take immediate and appropriate action to comply with this opinion by reconsidering its January 16, 2013, final action at a properly noticed meeting for which the agenda specifically references the subject of the admission fee increases.

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 *et seq.* (West 2010). As required by section 3.5(e) of OMA, the Board shall take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2010)). Judicial review of this decision may be obtained 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. Wizgird as defendants. *See* 5 ILCS 120/7.5 (West 2010).

Very truly yours,
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