



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 13, 2013

PUBLIC ACCESS OPINION 13-006
(Requests for Review 2013 PAC 23358 and 2013 PAC 23376)

OPEN MEETINGS ACT:
Secret Ballots Prohibited

Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

Mr. Blake Stiff
308 North Center Street
Kansas, Illinois 61933

Ms. Adonna Bennett, Chair
Edgar County Airport Advisory Board
c/o Mr. Jimmy Wells, Airport Manager
Edgar County Airport
15551 Airport Road
Paris, Illinois 61944

Dear Mr. Kraft, Mr. Stiff, and Ms. Bennett:

This binding opinion is 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 on February 12, 2013, the Edgar County Airport Advisory Board violated the requirements of OMA by voting to recommend a candidate to fill a vacant seat on the Advisory Board by secret ballot.

BACKGROUND

On February 13, 2013, the Public Access Bureau received a Request for Review from Mr. John Kraft alleging that during its regular meeting on February 12, 2013, the Advisory Board "held a secret ballot to determine which individual they would recommend to the county

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board to be appointed to an Airport Advisory Board vacant seat."¹ (Emphasis in original.) The Public Access Bureau received an identically worded Request for Review from Mr. Blake Stiff on February 14, 2013.² The Public Access Bureau sent copies of these Requests for Review to the Edgar County Airport Advisory Board (Advisory Board) and asked for a written response to the allegations, as well a copy of the minutes of the meeting.

In a letter dated February 26, 2013, and received by this office on March 4, 2013, Airport Manager Jimmy Wells responded to Mr. Stiff's Request for Review by stating:

The vote Mr. Stiff was referring to is a Straw Vote taken at an Airport Advisory Board Meeting to come up with one candidate, out of a group of four to recommend to the County Board to fill a vacant position on the Airport Advisory Board. As this was an open meeting, the names of the candidates were read to the public, the results were tallied in public.³

On March 7, 2013, this office forwarded the Advisory Board's response to Mr. Stiff.⁴ Mr. Stiff responded on March 12, 2013, stating that he believed the secret ballot was illegal because the Advisory Board adopted Robert's Rules of Order, which prohibits straw votes, adding that "[s]traw votes are in violation of the Open Meeting[s] Act[]."⁵

On March 5, 2013, Mr. Chris J. Patrick, the Chairman of the Edgar County Board, (County Board) sent a virtually identical response to the allegations in Mr. Kraft's Request for

¹E-mail from John Kraft to Public Access Bureau, Office of the Attorney General (February 12, 2013, 10:40 p.m.); assigned Request for Review number 2013 PAC 23358.

²E-mail from Blake Stiff to Public Access Bureau, Office of the Attorney General (February 13, 2013, 5:45 p.m.); assigned Request for Review number 2013 PAC 23376.

³Letter from Jimmy Wells, Manager, Edgar County Airport, to Matthew S. Hartman, Assistant Attorney General, Public Access Bureau (February 26, 2013).

⁴Letter from Matthew S. Hartman, Assistant Attorney General, Public Access Bureau, to Blake Stiff (March 7, 2013).

⁵E-mail from Blake Stiff to Matthew S. Hartman, Assistant Attorney General, Public Access Bureau (March 12, 2012).

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Review.⁶ On March 12, 2013, this office forwarded Mr. Patrick's letter to Mr. Kraft;⁷ he responded on the same day by asserting that the secret ballot vote was an illegal "binding decision on what to send to the [C]ounty [B]oard for their approval."⁸ The Advisory Board also furnished minutes of its February 12, 2013, meeting,⁹ as well as minutes from the March 13, 2013, County Board meeting.

Because the issues raised are identical, this office has consolidated the two Requests for Review for purposes of a response. On April 11, 2013, this office properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA.¹⁰

A representative of the Public Access Bureau contacted Mr. Wells by telephone on May 2, 2013, for confirmation regarding the procedures that the Advisory Board followed in conducting its vote. Mr. Wells stated that the names of the four candidates were on a ballot and members circled their choices. Mr. Wells reiterated his belief that the vote was a straw vote and that the County Board could have rejected the Advisory Board's recommendation. On May 3, 2013, this office contacted Mr. Kraft for additional information and confirmed that he had video recorded the meeting in question.¹¹ On May 6, 2013, this office received a compact disc from Mr. Kraft containing his recording of the February 12, 2013, meeting. We have reviewed the video of the meeting and the other information provided to this office.

⁶Letter from Chris J. Patrick, Edgar County Board Chairman, to Christopher R. Boggs, Assistant Attorney General, Public Access Bureau (March 5, 2012).

⁷Letter from Matthew S. Hartman, Assistant Attorney General, Public Access Bureau, to John Kraft (March 12, 2013).

⁸E-mail from John Kraft to Matthew S. Hartman, Assistant Attorney General, Public Access Bureau (March 12, 2013).

⁹The heading of the minutes contains the date "Mar 12, 2013" which we presume to be a scrivener's error, because the first line states "THE FEB 12th MEETING WAS CALLED TO ORDER AT 6:00 P.M.[,]" and because this office received a copy of the document from the Board on March 8, 2013. Edgar County Airport Committee, Meeting, February 12, 2013, Minutes 1.

¹⁰Letter from Matthew S. Hartman, Assistant Attorney General, Public Access Bureau, to John Kraft, Blake Stiff, and Jake Payne, Chairman, Edgar County Advisory Board.

¹¹Section 2.05 of OMA (5 ILCS 120/2.05 (West's 2010)) provides that "[a]ny person may record the proceedings at meetings required to be open by this Act by tape, film or other means[.]"

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The facts concerning the vote taken at the February 12, 2013, meeting are not disputed. Under "new business," the Advisory Board discussed the need to fill a vacancy on the Board, and the names of four candidates who had expressed an interest in the position were read aloud.¹² Paper ballots listing the names of the four candidates were then distributed and five Advisory Board members circled their choices before placing their ballots into a coffee can.¹³ The ballots did not identify which Board member cast which vote. The ballots were removed from the can and the votes counted. The person who counted the votes announced that Adonna Bennett had received three votes and that Stan McIntosh had received two votes; therefore, the Advisory Board would recommend to the County Board that it appoint Adonna Bennett.¹⁴

The meeting minutes contain the following summary of the action, which is consistent with the Board's description and the video:

*Ballot vote to fill position on the Advisory Board.
Names submitted: Blake Stiff, Joe Scheiner, Stan McIntosh and
Adonna Bennett. Ballots were cast [] and tallied.
Results are: Blake Stiff-0
Joe Scheiner-0
Stan McIntosh-2
Adonna Bennett-3

Recommended by the Advisory Board to have Ben Jenness take
the name of Adonna Bennett to the next County Board Meeting as
recommendation to replace the vacancy on the Airport Advisory
Board.¹⁵

The minutes of the March 13, 2013, County Board meeting reflect that Adonna Bennett was, in fact, appointed to fill the vacancy on the Advisory Board.¹⁶

¹² Edgar County Airport Advisory Board, Meeting, February 12, 2013, Compact Disc at 13:41-14:07 (on file with the Public Access Bureau).

¹³ Edgar County Airport Advisory Board, Meeting, February 12, 2013, Compact Disc at 14:07-15:58 (on file with the Public Access Bureau).

¹⁴ Edgar County Airport Advisory Board, Meeting, February 12, 2013, Compact Disc at 16:40-16:50 (on file with the Public Access Bureau).

¹⁵ Edgar County Airport Committee, Meeting, February 12, 2013, Minutes 1.

¹⁶ Edgar County Board, Meeting, March 13, 2013, Minutes 1.

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ANALYSIS

The General Assembly enacted OMA "to protect the citizen's right to know[.]" 5 ILCS 120/1 (West 2010). Accordingly, section 1 of the Act (5 ILCS 120/1 (West 2010)) provides:

It is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business. In order that the people shall be informed, the General Assembly finds and declares that it is the intent of this Act *to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly*. Emphasis added.

County boards are "public bodies" and are therefore subject to the provisions of OMA. 5 ILCS 120/1.02 (West 2010), as amended by Public Act 97-1129, effective August 28, 2012). Moreover, advisory and other subsidiary bodies of a public body, including "committees and subcommittees thereof,"¹⁷ are also considered "public bodies" under OMA and are, therefore, also subject to its requirements. Section 2(e) of OMA (5 ILCS 120/2(e) (West 2011 Supp.), as amended by Public Acts 97-813, effective July 13, 2012; 97-876, effective August 1, 2012) provides that "[f]inal action [by a public body] shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." *See also People ex rel. Hopf v. Barger*, 30 Ill. App. 3d 525, 536 (2nd Dist. 1975) ("The clear intention of the legislature expressed in the Act favors, of course, open deliberation, as well as open action").

By characterizing the balloting as a "straw vote," the Advisory Board apparently is suggesting that it did not take final action to recommend a candidate, because the County Board was free to accept or reject the Advisory Board's recommendation. Black's Law Dictionary defines a straw poll as a "nonbinding vote, taken as a way of informally gauging support or opposition but usu. without a formal motion or debate." Black's Law Dictionary 1557 (9th ed. 2009). Although the vote to select a candidate was not binding on the County Board, the recommendation of a candidate to fill the vacancy on the Advisory Board was clearly a final action by the Advisory Board, and not a preliminary, informal procedure for gauging support or opposition for the specific candidates. Therefore, the vote was subject to the requirements of OMA.

¹⁷5 ILCS 120/1.02 (West 2011 Supp.), as amended by 97-1129, effective August 28, 2012.

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The use of secret ballots by public bodies undermines the public's right to know. Attorney General Kerner addressed the problem of secret ballots in 1933 when he stated:

Of what avail is an open door to the public if the proceedings are secret. The eye can see, the ear can hear, but secrecy conceals all. It is no advantage to the citizen to see a member write a name secretly on a ballot unless he is privileged to read what is thereon written. If the vote were taken by whispering in tones so low the attending citizen could not hear, how would he know what was being done. If no record is made of how the individual members vote, of what avail is the statute providing for a meeting with open doors. 1933 Ill. Att'y Gen. Op. 334, 335.

In *WSDR, Inc. v. Ogle County*, 100 Ill. App. 3d 1008, 1011 (2nd Dist. 1981), the Appellate Court held that the use of secret ballots to elect a board chairman violated the public policy of the State and OMA. The court reasoned that electing the chairman by secret ballot was "the antithesis of an open meeting even though the vote was conducted in the presence of the public." *WSDR, Inc.*, 100 Ill. App. 3d at 1009-1010. The court referred to an Attorney General opinion in which the rationale for prohibiting secret ballots was explained as follows:

[S]ecret balloting serves to protect public officials from criticism.
* * * However, public officials are subject to criticism for action they take in fulfilling their duties as public officials and anyone who undertakes a public office or membership on a public body should be aware that his actions will be subject to criticism. Anyone who is unwilling to subject himself to such criticism by the public should not accept public office or membership of a public board. The public has a right to know how their public officials and representatives vote on issues, not only so they may try to persuade them to change their position or congratulate them on actions they have taken, but also that they may have the necessary information to decide whether they want to retain that person in public office. Secret voting by members of public bodies, can only contribute to further deterioration of public confidence in government and undermine the very bases of representative democracy. 1975 Ill. Att'y Gen. Op. 136, 138-139.

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In this case the Advisory Board read the names of four candidates out loud, had members circle their choices on a paper ballot, and announced the results of the vote. Based on this vote, the Advisory Board took final action to recommend to the County Board that the person selected be appointed to fill the vacancy on the Advisory Board. The Advisory Board members did not reveal their choices to the public, and the Advisory Board did not make a record of how each member voted. Such secrecy contravenes the General Assembly's intent in enacting OMA and public policy. Accordingly, this office concludes that the Advisory Board violated section 2(e) of OMA by taking final action to recommend to the County Board a candidate to fill a vacancy using secret ballots.

FINDINGS AND CONCLUSIONS

After full examination 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 February 12, 2013, the Edgar County Airport Advisory Board conducted a vote by secret ballot to select a candidate to recommend to the County Board to fill a vacancy on the Advisory Board. The members of the Advisory Board did not disclose how they individually voted.

2) On February 13, 2013, and February 14, 2013, respectively, the Public Access Bureau received Requests for Review of the Advisory Board's use of a secret ballot from Mr. Kraft and Mr. Stiff. The Requests for Review were timely filed and otherwise comply with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2010)). The Public Access Counselor extended the time for issuance of a binding opinion by 21 business days pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

3) By using secret ballots to select a candidate to recommend to the County Board to fill a vacant seat on the Advisory Board, the Advisory Board violated section 2(e) of OMA.

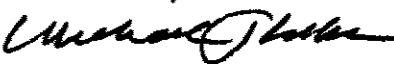
In accordance with these findings of fact and conclusions of law, the Advisory Board is directed to conduct its future meetings in full compliance with OMA. At all such meetings, and before taking final action on any matter which has been properly listed on its agenda, the Advisory Board shall conduct an open vote that informs the public of each Advisory Board member's vote.

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This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *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 or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois, Mr. John Kraft, and Mr. Blake Stiff 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

cc: The Honorable Chris Patrick, Chairman
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Paris, Illinois 61944