



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 5, 2014

PUBLIC ACCESS OPINION 14-003
(Request for Review 2014 PAC 27859)

OPEN MEETINGS ACT:
Amending Agenda During
48-Hour Posting Period

Mr. Michael Greenfield
3798 Michael John Drive
Swansea, Illinois 62226

The Honorable Dave Barnes
Supervisor
St. Clair Township
107 Service Streets
Swansea, Illinois 62226-3943

Dear Mr. Greenfield and Mr. Barnes:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons discussed below, this office concludes that the St. Clair Township Board (Board) did not violate OMA when it amended the agenda for its January 28, 2014, meeting less than 48 hours prior to that meeting.

BACKGROUND

Mr. Michael Greenfield submitted a Request for Review, received by the Public Access Bureau on February 4, 2014, asserting that the Board changed the agenda published on the township website for its January 28, 2014, meeting "approximately 29 hours prior to the meeting[.]"¹ Mr. Greenfield alleged that under section 2.02 of OMA (5 ILCS 120/2.02 (West 2012)), an agenda cannot be changed less than 48 hours prior to a meeting. In support of his

¹E-mail from Michael Greenfield to Sarah Pratt, Public Access (February 3, 2014).

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Request for Review, Mr. Greenfield included copies of the original agenda and the amended agenda.

In a February 13, 2014, letter, the Public Access Bureau forwarded a copy of the Request for Review to the Board and also asked for a written explanation of the circumstances concerning the posting of the amended agenda for the January 28, 2014, meeting.² The Board's response, received by the Public Access Bureau on February 24, 2014, confirmed that the Board posted the original meeting agenda on the Board's website on January 24, 2014, and then posted an amended agenda on Monday, January 27, 2014.³ The Board explained that on January 27, 2014, it received information that because of a change in circumstances, consideration of final action on two items that had been placed on the agenda would have to be delayed until a later time.⁴ Accordingly, "[i]n an effort to be transparent with the public, we amended the agenda as quickly as we could and posted it on our website, so the public could see that we were not going to take action on those two matters at this time."⁵ (Emphasis in original.)

The items deleted from the original agenda, under the heading "10. BUSINESS ITEMS," were: "H. Discuss and Vote to ratify the new collective bargaining agreement effective Feb. 01, 2014;" and "I. Personnel."⁶ The Board added these items to the amended agenda under the heading "11. EXECUTIVE SESSION": "B. Move to executive session 2C2 to discuss Union Negotiations"; and "C. Move to executive session 2C1 to discuss Personnel" ("2C2" and "2C1" were presumably references to sections 2(c)(2) and 2(c)(1) of OMA (5 ILCS 120/2(c)(2), (c)(1) (West 2012), as amended by Public Act 98-49, effective July 1, 2013) which permit a public body to hold closed meetings to discuss collective bargaining issues, and the appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body, respectively).⁷ The Board explained:

²Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Dave Barnes, Supervisor, St. Clair Township (February 13, 2014).

³Letter from Dave Barnes, Supervisor, St. Clair Township, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 18, 2014).

⁴Letter from Dave Barnes, Supervisor, St. Clair Township, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 18, 2014).

⁵Letter from Dave Barnes, Supervisor, St. Clair Township, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 18, 2014).

⁶St. Clair Township, Regular Meeting of January 28, 2014, Agenda Items 10. H. and 10. I. (January 24, 2014).

⁷St. Clair Township, Regular Meeting of January 28, 2014, Amended Agenda Items 11. B. and 11. C. (January 24, 2014).

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The only difference [in the two agendas] is that two action items (10H and 10I) were removed from the original agenda. These two items were then placed under "Executive Session" and would not be voted on. No new action items were added to the amended agenda. (Emphasis in original.)⁸

On February 27, 2014, this office forwarded a copy of the Board's response to Mr. Greenfield.⁹ He did not reply. On March 28, 2014, this office properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA.¹⁰

ANALYSIS

The intent of OMA is to ensure that public bodies deliberate and take actions openly. 5 ILCS 120/1 (West 2012). The public policy as declared in section 1 of OMA 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." The specific requirements for public notice of all open or closed meetings are set forth in section 2.02 of OMA. No provision of OMA specifically addresses amendments to meeting agendas by public bodies. Therefore, the issue for our determination is whether the revisions to the January 28, 2014, meeting agenda violated the requirements of section 2.02.

Section 2.02(a) of OMA (5 ILCS 120/2.02 (West 2012)) 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.) In addition, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2012)) 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." Section 2.02(b) (5 ILCS 120/2.02(b) (West 2012)) requires that any public body that has a website maintained by the full-time staff of the public body shall also post notice of all meetings of the governing body of the public body on its website.

The information submitted to this office indicates that the Board complied with section 2.02(a) of OMA by posting the original agenda on its website more than 48 hours in advance of the January 28, 2014, meeting. The Board also complied with section 2.02(c)'s

⁸Letter from Dave Barnes, Supervisor, St. Clair Township, to Shari L. West, Assistant Attorney General, Public Access Bureau (February 18, 2014).

⁹Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Michael Greenfield (February 27, 2013).

¹⁰Letter from Shari L. West, Assistant Attorney General, Public Access Bureau, to Michael Greenfield and Dave Barnes, Supervisor, St. Clair Township Board (March 28, 2014).

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requirement that at least one copy of the notice and agenda for a meeting be continuously available for public review during the entire 48-hour period preceding the meeting. The remaining requirement that the agenda "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting" is clearly aimed at assuring that the public is informed of the subject of any final action that may be taken at the meeting.¹¹

A public body is under no obligation, however, to take final action on a matter because the item appears on the agenda. Instead, a public body may determine not to consider final action on a matter that has been listed on the agenda as an "action item." A public body may decide, for example, that additional information or discussion is necessary, and consequently postpone or cancel consideration of a resolution or ordinance. An agenda is an informational guideline of what the public body anticipates considering at a meeting; a public body is not required by section 2.02 of OMA to address a matter because it is listed on the agenda. Indeed, assuming that its rules of procedure permit it, the Board could have decided not to amend the agenda and simply deferred consideration of the two items to a later time.

Further, because OMA does not require "notice in the agenda of topics to be considered in closed session," the Board's addition of the two items under the heading "Executive Session" did not violate section 2.02 of OMA. *See Gosnell v. Hogan*, 179 Ill. App. 3d 161, 177 (5th Dist. 1989), *appeal denied*, 126 Ill. 2d 558 (1989); *see also* 5 ILCS 120/2a (West 2012)) ("[a]t any open meeting of a public body for which proper notice under this Act has been given, the body may, without additional notice under Section 2.02, hold a closed meeting in accordance with this Act."). Although OMA did not require the Board to amend its agenda in these circumstances, its amendment accurately reflected the topics of the closed discussion and the statutory basis for consideration in a closed session.

For the reasons stated above, this office concludes that the Board's revisions to the agenda for its January 28, 2014, meeting, less than 48 hours prior to the meeting, did not violate the provisions of OMA. While a public body may not take final action on a matter unless it has been properly posted on the agenda at least 48 hours prior to a meeting (*see Rice v. Board of*

¹¹The Senate debate on House Bill No. 4687, which was enacted as Public Act 97-827, (codified at 5 ILCS 120/2.02(c), effective January 1, 2013), indicates that the amendment of section 2.02 to add the posting and notice requirements discussed herein 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:

[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.

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Trustees of Adams County, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002), section 2.02 of OMA does not prohibit a public body from deleting items for consideration from a posted agenda within the posting period. Additionally, although it was not required to amend the agenda, the Board's decision to post an amended agenda served to provide greater transparency for members of the public.

FINDINGS AND CONCLUSIONS

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

- 1) On January 24, 2014, the St. Clair Township Board posted an agenda on its website for the January 28, 2014, Board meeting.
- 2) On January 27, 2014, the Board posted an amended agenda for its January 28, 2014, meeting, in which two "action items" on the original agenda were deleted and two similar items were added to "Executive Session" heading.
- 3) On February 4, 2014, the Public Access Bureau received a Request for Review from Mr. Michael Greenfield alleging that the Board violated OMA by revising the agenda on its website less than 48 hours before the January 28, 2014, regular Board meeting.
- 4) Mr. Greenfield'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 2012)). 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.
- 5) Pursuant to section 2.02(a) of OMA, a public body (including 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."

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6) An agenda is an informational outline of the matters that the public body anticipates it will consider at a meeting. Nothing in section 2.02 of OMA, however, requires a public body to address every item that is included on the agenda, nor is a public body prohibited from revising its agenda less than 48 hours before a meeting to delete a specific matter because changes in circumstances preclude consideration of that matter. In this instance, the public did receive at least 48 hours' notice of the subjects upon which the Board did take final action, as required by section 2.02(c) of OMA and *Rice v. Board of Trustees of Adams County*. Additionally, because of the Board's decision to post an amended agenda, the public received an important update on the Board's plans for the meeting.

Accordingly, the Attorney General finds that the St. Clair Township Board did not violate section 2.02 of the Open Meetings Act when it amended the agenda for its January 28, 2014, meeting less than 48 hours prior thereto by deleting two items that were originally proposed for action. The Attorney General further finds that the public did receive at least 48 hours' notice of the matters that the Board did consider at the meeting, as required by section 2.02 of OMA.

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 2012). An aggrieved party may obtain judicial review of this 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 St. Clair Township Board as defendants. *See* 5 ILCS 120/7.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General