



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 13, 2019

PUBLIC ACCESS OPINION 19-012
(Request for Review 2019 PAC 59426)

OPEN MEETINGS ACT:
Taking Final Action on Matter Not
Sufficiently Identified on Meeting Agenda

Mr. Larry Short
601 East Decatur
Newton, Illinois 62448

The Honorable Mark A. Bolander
Mayor
City of Newton
108 North Van Buren Street, Room A
Newton, Illinois 62448

Dear Mr. Short and Mr. Bolander:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, this office concludes that the City Council (Council) of the City of Newton (City) violated OMA during its August 20, 2019, meeting by approving an ordinance to increase application fees for permits without providing advance notice of that final action on the meeting agenda.

BACKGROUND

In an e-mail dated August 21, 2019, and received by the Public Access Bureau on August 22, 2019, Mr. Larry Short submitted a Request for Review alleging that the Council violated OMA by failing to identify on its August 20, 2019, meeting agenda the general subject matter of an ordinance that the Council acted upon at that meeting.¹ Specifically, Mr. Short cited

¹E-mail from Larry Short to Public Access [Bureau, Office of the Attorney General] (August 21, 2019).

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Agenda item 8.d., which states: "Consider and act on Ordinance 19-11 to Amend Section 33-4-4 (F)."² Mr. Short further stated:

I find it interesting that every other agenda item is very descriptive and you know exactly what it pertains to except item "d".

The reason is that section 33-4-4 (f) pertains to permit fees and while I have not seen ordinance 19-11 I assume it is [an] increase in fees and they want to hide it.^[3]

On August 28, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the City's mayor, the Honorable Mark Bolander, and asked him to provide copies of the Council's August 20, 2019, meeting agenda and meeting minutes, and a copy of the ordinance that Mr. Short referenced for the agenda item in question. This office also asked the Council for a written response which, if the Council confirmed that it had taken final action on that ordinance during its August 20, 2019, meeting, would also respond to Mr. Short's allegation that the agenda item did not provide sufficient advance notice of the general subject matter of that final action.⁴ The Public Access Bureau received the requested materials from the Council on September 17, 2019. Mayor Bolander's answer, dated September 9, 2019, acknowledged that the Council took final action on the ordinance at its August 20, 2019, meeting but asserted that the relevant agenda item provided sufficient advance notice of that action.⁵ On September 19, 2019, the Public Access Bureau forwarded a copy of the Council's answer to Mr. Short.⁶ Mr. Short did not provide a written reply. On October 17, 2019, pursuant to section 3.5(e) of OMA, this office properly extended the time within which to issue a binding opinion by 21 business days, to November 19, 2019.⁷

²Newton City Council, Meeting, Agenda Item 8.d. (August 20, 2019).

³E-mail from Larry Short to Public Access [Bureau, Office of the Attorney General] (August 21, 2019). The application fees for permits were increased from \$100.00 to \$500.00.

⁴Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to the Honorable Mark Bolander, Mayor, City of Newton (August 28, 2019).

⁵Letter from Mark A. Bolander, Mayor, City of Newton, to Office of the Attorney General of the State of Illinois, Public Access Bureau (September 9, 2019).

⁶Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Larry Short (September 19, 2019).

⁷Letter from Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General, to Larry Short and the Honorable Mark A. Bolander, Mayor, City of Newton (October 17, 2019).

ANALYSIS

Under OMA, 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 2018). OMA 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[]" and that "[a] public body that has a website that the full-time staff of the public body maintains shall also post on its website the agenda of any regular meetings of the governing body of that public body." 5 ILCS 120/2.02(a) (West 2018). Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) further 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." (Emphasis added.)

"The primary objective * * * when construing the meaning of a statute is to ascertain and give effect to the intent of the legislature." *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of the Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). When statutory language is clear and unambiguous, a reviewing body "may not depart from the plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express." *Hayashi v. Illinois Dep't of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2014). If the language of a statute is clear and unambiguous, it should be interpreted without resorting to aids of statutory construction. *In re B.L.S.*, 202 Ill. 2d 510, 515 (2002). However, "[w]here the language of the statute is ambiguous, it is appropriate to examine the legislative history." *In re B.L.S.*, 202 Ill. 2d at 517.

OMA does not contain a definition of the phrase "general subject matter," nor is there a commonly understood meaning for the phrase. "General" is defined, as "[r]elating to, concerned with, or applicable to the whole or every member of a class or category[.]" and "[i]nvolving only the main features of something rather than details or particulars." The American Heritage Dictionary 552 (2d coll. ed. 1982). "Subject matter" is defined as "[t]he issue presented for consideration; the thing in which a right or duty has been asserted; the thing in dispute." *Black's Law Dictionary* (11th ed. 2019), available at Westlaw BLACKS. The commonly understood meanings of the indicated terms do little to clarify the amount of information section 2.02(a) requires a public body to provide on its meeting agenda for topics upon which it anticipates taking final action. Although the modifier "general" signifies that an agenda item may identify a broad subject matter, the word is inherently ambiguous.

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Accordingly, this office will consider the statute's legislative history to construe the meaning of "general subject matter." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficient detail to notify members of the public of the types of final actions that public bodies anticipate taking at their meetings:

[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.

Again, the agenda item in question, 8.d., stated "Consider and act on Ordinance 19-11 to Amend Section 33-4-4 (F)." The minutes of the Council's August 20, 2019, meeting indicate that the Council unanimously approved a motion "to pass Ordinance 19-11 to Amend Section 33-4-4 (F)."⁸ A copy of Ordinance 19-11 provided to this office for review states, in its entirety:

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF NEWTON, ILLINOIS that (F) Application Fees of SECTION 33-4-4^[9] of the City Code of the City of Newton, Illinois is hereby amended to change the Application Fee for all applications for permit from \$100.00 to \$500.00.^[10]

Despite the absence of any reference to applications and fees for permits on the August 20, 2019, meeting agenda, the Council's response to this office asserted that the agenda item concerning the ordinance provided sufficient advance notice because a member of the

⁸Newton City Council, Meeting, August 20, 2019, Minutes 1.

⁹SECTION 33-4-4 requires permits for certain construction which impacts any City right-of-way.

¹⁰Newton, Ill., Ordinance 19-11, An Ordinance to Amend Section 33-4-4 (F) of the Newton City Code (August 20, 2019).

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public could have determined the general subject matter of the ordinance by reviewing the version of the City Code posted on the City's website.¹¹ The response stated:

By reference in the Agenda to City Municipal Code 33-4-4(F), the general nature of the matters to be discussed were incorporated by reference. Inasmuch as said Code is available as hereinabove set forth, then by such incorporation by reference, the Public has been generally notified of the general subject matter that was referenced for discussion and action.^{12]}

The agenda itself, however, only indicated that the ordinance would amend "Section 33-4-4(F)."¹³ The agenda did not identify "Section 33-4-4(F)" as a part of the City Code or as pertaining to permit applications and fees. A member of the public who is not familiar with the numbering of the City Code would have had to guess as to the document that was to be amended by Ordinance 19-11.

Even if it could be inferred that the ordinance would amend the City Code, the City's argument that the agenda item was sufficient because it incorporated by reference the online version of the City Code is misplaced. In *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶33, 77 N.E.3d 625, 632 (2017), the Illinois Supreme Court indicated that a school board's posted agenda provided sufficient advance notice of its vote to approve a resolution by setting forth the general subject matter of the resolution, "approval of a resolution regarding a separation agreement[,]" as well as by identifying the employee to whom the agreement pertained and including an internet link to the text of the agreement.¹⁴ In contrast, the language of the agenda item at issue in this matter does not identify the general subject matter of the City Code provision amended by the ordinance or contain a link to the relevant portion of the online version of the City Code. Further, the plain language of section 2.02(c) requires the *agenda* to identify the general subject matter of all final actions. Requiring members of the public to access online resources to decipher the general

¹¹NEWTON, ILL., REV. CODE OF ORDINANCES (2015 and Supp. 2018), available at <https://www.cityofnewtonil.com/municipal-code.html>

¹²Letter from Mark A. Bolander, Mayor, City of Newton, to Office of the Attorney General of the State of Illinois, Public Access Bureau (September 9, 2019), at 2.

¹³Newton City Council, Meeting, Agenda Item 8.d. (August 20, 2019).

¹⁴The Court's discussion of the school board's compliance with section 2.02(c) was not part of the holding, which concluded that the school board provided an adequate public recital pursuant to section 2(e) of OMA (5 ILCS 120/2(e) (West 2012)) before taking final action on the separation agreement. *Board of Education of Springfield School District No. 186*, 2017 IL 120343, ¶84, 77 N.E.3d at 639.

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subject matter of items listed on an agenda would frustrate the General Assembly's intention of ensuring that agendas themselves disclose the general subject matter of resolutions or ordinances upon which public bodies anticipate taking action.

Notably, agenda item 8 lists three resolutions by number and identifies their subject matter: "a. Consider and act on Resolution 19-07 Closed Session Minutes." "b. Consider and act on Resolution 19-08 Authorizing the Destruction of Closed Meetings Sessions audio recording." "c. Consider and act on Resolution 19-06 Council Resolution of Support for CDB Grant."¹⁵ The subject matter of agenda item 8.d. is conspicuously absent. Because this agenda item merely identified the number of an ordinance and indicated that it would amend a section of an unspecified compilation, this office concludes that the Council did not satisfy the requirements of section 2.02(c) of OMA by setting forth the general subject matter of the Council's final action that increased application fees for permits from \$100.00 to \$500.00. Although section 2.02(c) did not require the Council to identify the amount of the increase on the agenda, at a minimum, the agenda should have indicated that the Council would consider an ordinance amending the City Code and concerning permit application fees.

FINDINGS AND CONCLUSIONS

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

1) In an e-mail dated August 21, 2019, and received by the Public Access Bureau on August 22, 2019, Mr. Larry Short submitted a Request for Review alleging that the Newton City Council violated OMA by failing to provide on its August 20, 2019, meeting agenda sufficient advance notice of final action taken on an ordinance concerning application fees for permits. Mr. Short alleged that the agenda item did not set forth the general subject matter of the ordinance. Mr. Short'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 2018)).

2) On August 28, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the City's mayor and asked him to provide copies of the Council's August 20, 2019, meeting agenda and meeting minutes as well as a copy of the ordinance referenced in the agenda item in question. This office also requested a written response to Mr. Short's allegation that the agenda item did not provide sufficient advance notice of the general subject matter of that final action, if the Council took final action on the agenda item referenced in his Request for Review.

¹⁵Newton City Council, Meeting, Agenda Items 8.a. though c. (August 20, 2019).

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3) On September 17, 2019, this office received the requested materials from the City's mayor.

4) On September 19, 2019, the Public Access Bureau forwarded a copy of the City's written answer to Mr. Short. Mr. Short did not provide a written reply.

5) On October 17, 2019, pursuant to section 3.5(e) of OMA, this office properly extended the time within which to issue a binding opinion by 21 business days, to November 19, 2019. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) 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."

7) The term "general subject matter" is ambiguous. The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) to OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficient detail to notify members of the public of the types of final actions public bodies anticipated taking at their meetings.

8) Agenda item 8.d. for the Council's action to approve the ordinance raising the fee provided: "Consider and act on Ordinance 19-11 to Amend Section 33-4-4 (F)."

9) During the August 20, 2019, meeting, the Council passed a motion to approve the ordinance. The ordinance amended the City Code to raise the application fee for permits from \$100.00 to \$500.00.

10) Agenda item 8.d. provided only an ordinance number and identified a "Section," but did not identify the underlying document of which the "Section" was a part. The agenda did not identify the general subject matter—application fees for permits—of the ordinance or the City Code provision amended by the ordinance that the Council approved.

11) Information in the City Code posted on the City's website is not sufficient to justify the Council's August 20, 2019, agenda. The agenda item in question did not incorporate by reference the City Code provision to be amended or contain a hyperlink to that provision. Moreover, the plain language of section 2.02(c) requires that the agenda itself identify the general subject matter of the Council's final action.

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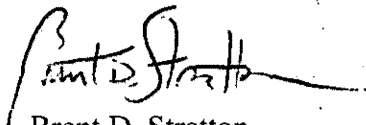
Therefore, it is the opinion of the Attorney General that the City Council of the City of Newton violated section 2.02(c) of the Open Meetings Act in connection with its August 20, 2019, meeting by approving an ordinance to increase application fees for permits without including the general subject matter of that final action on the meeting agenda. In accordance with these findings of fact and conclusions of law, the Council is directed to remedy this violation by reconsidering its August 20, 2019, final action on the fee ordinance at a properly noticed meeting for which the agenda contains the general subject matter of that ordinance. As required by section 3.5(e) of OMA, the Council shall either 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 2018)).

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 2018). 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 Larry Short as defendants. *See* 5 ILCS 120/7.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:


Brent D. Stratton
Chief Deputy Attorney General

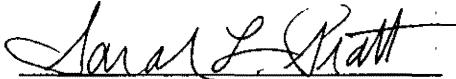
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 19-012) upon:

Mr. Larry Short
601 East Decatur
Newton, Illinois 62448
larry@newtonil.com

The Honorable Mark A. Bolander
Mayor
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on November 13, 2019.


SARAH L. PRATT
Public Access Counselor

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