



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 10, 2020

PUBLIC ACCESS OPINION 20-001
(Request for Review 2019 PAC 60592)

OPEN MEETINGS ACT:
Duty to Approve Meeting Minutes Within
Time Period Specified by OMA

Mr. Steve LaRock
2444 Apache Avenue
Sauk Village, Illinois 60411

The Honorable Derrick Burgess
Mayor
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411

Dear Mr. LaRock and Mr. Burgess:

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 Board of Trustees (Board) of the Village of Sauk Village (Village) violated OMA because it did not approve minutes of three meetings within the time periods specified by OMA.

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BACKGROUND

On November 13, 2019, Mr. Steve LaRock submitted a Request for Review to the Public Access Bureau via e-mail alleging that the Board violated section 2.06(b) of OMA (5 ILCS 120/2.06(b) (West 2018)).¹ Specifically, Mr. LaRock asserted that at the Board's November 12, 2019, regular meeting, the Board approved the minutes of its September 10, 2019, regular meeting, its September 10, 2019, special meeting, and its September 17, 2019, Committee of the Whole meeting, but that the approval of these minutes was not within the time periods specified by OMA.² Mr. LaRock provided this office with a copy of the agenda for the November 12, 2019, meeting, which contains the following item:

4) APPROVAL OF MINUTES

- a. Motion to Approve the Journal of Proceedings for the Special Meeting of September 10, 2019
- b. Motion to Approve the Journal of Proceedings for the Regular Board Meeting of September 10, 2019
- c. Motion to Approve the Journal of Proceedings for the Committee Meeting of September 17, 2019³

On November 18, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the Village's mayor, the Honorable Derrick Burgess, and asked the Board for "a written answer to Mr. LaRock's allegation that it did not approve the minutes of its September 10, 2019, meeting in a timely manner."⁴ This office also asked the Board to "verify how many regular meetings the Board held from September 10, 2019, through November 12, 2019."⁵ The Public Access Bureau received the Board's answer from Village Administrator, Mr. Christopher A. Williams. In his December 11, 2019, e-mail, Mr. Williams stated that "we acknowledge the minutes were not approved and posted at our standard frequency because of the

¹E-mail from Steve LaRock to Public Access Counselor, Office of the Attorney General (November 13, 2019).

²E-mail from Steve LaRock to Public Access Counselor, Office of the Attorney General (November 13, 2019).

³Village of Sauk Village Board of Trustees, Agenda Item 4, Approval of Minutes (November 12, 2019).

⁴Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to the Honorable Derrick Burgess, Mayor, Village of Sauk Village (November 18, 2019), at 1.

⁵Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to the Honorable Derrick Burgess, Mayor, Village of Sauk Village (November 18, 2019), at 1.

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significant increase in meetings."⁶ He asserted that it was "impossible to meet the tenets of OMA relative to completing minutes within a thirty (30) day period" given the volume of meetings and staffing shortages.⁷ Mr. Williams attached a "Chart of Meetings from 05/21/2019 – 11/19/2019," which reflects that the Board held the following meetings: (1) regular meetings on September 10, 2019, September 24, 2019, October 8, 2019, and October 22, 2019;⁸ (2) special meetings on September 10, 2019, September 26, 2019, and October 15, 2019; and (3) Committee of the Whole meetings on September 17, 2019, October 1, 2019, October 15, 2019, November 5, 2019, and November 12, 2019.

On December 12, 2019, an Assistant Attorney General (AAG) in the Public Access Bureau sent Mr. Williams an e-mail asking "although my letter addressed the September 10, 2019, regular Board meeting in particular, am I correct to assume that your response also pertains to the September 10, 2019, special meeting and September 17, 2019, Committee of the Whole meeting?"⁹ On that same date, Mr. Williams responded in the affirmative.¹⁰ Also on that same date, this office forwarded to Mr. LaRock copies of the Board's answer and Mr. Williams' confirmation about the special meetings and Committee of the Whole meetings.¹¹ Later still on that date, Mr. LaRock submitted a reply.¹² He attached Board and Committee of the Whole meeting agendas from throughout 2019 and alleged that they illustrate a pattern of the Board approving minutes past the statutory deadline. On January 3, 2020, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to February 10, 2020, pursuant to section 3.5(e) of OMA.¹³

⁶E-mail from Christopher A Williams to [Joshua] Jones (December 11, 2019).

⁷E-mail from Christopher A Williams to [Joshua] Jones (December 11, 2019).

⁸Although the chart does not list a regular Board meeting for November 12, 2019, on December 19, 2019, Mr. Williams confirmed via e-mail that the Board held a regular meeting on that date and voted to approve the three sets of minutes at issue. E-mail from Chris Williams to Joshua Jones (December 19, 2019).

⁹E-mail from Joshua Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Village Administrator Christopher Williams (December 12, 2019).

¹⁰E-mail from Chris Williams to Joshua Jones (December 12, 2019).

¹¹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Steve LaRock (December 12, 2019); e-mail from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Steven LaRock (December 12, 2019).

¹²E-mail from Steve LaRock to the Public Access Counselor, Deputy Bureau Chief Jones, and others copied herein (December 12, 2019).

¹³Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, to Steve LaRock and Christopher A Williams, Village Administrator, Village of Sauk Village.

ANALYSIS

Under OMA, "[i]t 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." 5 ILCS 120/1 (West 2018).

Section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2018)) provides that "[a]ll public bodies shall keep written minutes of all their meetings, whether open or closed[.]" Section 2.06(b) adds that "[a] public body shall approve the minutes of its open meeting within **30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later.**" (Emphasis added.) Section 2.06(b) also requires minutes to be made available for public inspection within 10 days after approval by the public body. Thus, the issue here is whether the Board's approval of minutes of the three meetings in question complied with this provision.

In construing a statute, the primary objective is to ascertain and give effect to the intent of the General Assembly. *Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). "[T]he surest and most reliable indicator of" legislative intent "is the statutory language itself, given its plain and ordinary meaning." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶24, 77 N.E.3d 625, 630 (2017).

The language of section 2.06(b) of OMA is clear. A public body is required to approve the minutes of an open meeting within 30 days after that meeting or at its second subsequent regular meeting, whichever date is later in time. Accordingly, if a public body holds two or more regular meetings within 30 days or less, it is required to approve the minutes of the first meeting by the 30th day after that meeting. On the other hand, if 30 days have elapsed after a meeting but the public body has not yet held a second subsequent regular meeting, the public body has until the second subsequent regular meeting to approve the minutes. Thus, depending on the public body's meeting schedule, the time frame for approval of minutes can vary.

In applying section 2.06(b) of OMA, this office notes that a "committee of the whole" is not a committee of a public body in the typical sense of a subset of the members of a public body who focus on a particular subject matter, such as, for example, a Finance Committee, Public Safety Committee, or Water and Sewer Committee. Rather, a "committee of the whole" is defined as:

A committee that comprises all the deliberative assembly's members who are present. • A deliberative assembly may resolve itself into a committee of the whole so that it can take advantage of the greater procedural flexibility that a committee enjoys, usu.

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presided over by some chair other than the assembly's regular chair. Black's Law Dictionary (11th ed. 2019), *available at* Westlaw BLACKS.

Meetings of a committee of the whole enable a full public body to meet and discuss issues under relaxed procedural rules without taking final action. The Board confirmed that its Committee of the Whole meetings "are administrative meetings in which all Corporate Authorities (Mayor and Board of Trustees) are present to discuss items then placed on the agenda for Board meeting."¹⁴ Therefore, the Committee of the Whole is not a "public body" distinct from the Board for purposes of OMA.¹⁵ As a result, section 2.06(b) of OMA requires the Board to approve the minutes of a Committee of the Whole meeting within 30 days after the meeting or at the Board's second subsequent regular meeting, whichever is later.

In this matter, the facts are undisputed that the Board did not approve the minutes of its September 10, 2019, regular meeting, September 10, 2019, special meeting, or September 17, 2019, Committee of the Whole meeting by the statutory deadlines. Specifically, on October 8, 2019, the Board held its second subsequent regular meeting after its September 10, 2019, regular and special meetings. Therefore the 30-day deadline, October 10, 2019, was later than the second subsequent meeting, and was the date by which the minutes of the Board's September 10, 2019, regular and special meetings should have been approved. Similarly, on October 8, 2019, the Board held its second subsequent regular meeting after the Committee of the Whole's September 17, 2019, meeting. Thirty days after the September 17, 2019, meeting was October 17, 2019. Because the Board held two subsequent regular meetings before the 30-day period elapsed, October 17, 2019, was the date by which the Board should have approved the minutes of the Committee of the Whole's September 17, 2019, meeting.

Although the Board claimed that compliance with the statutory deadlines set by section 2.06(b) was impossible because of the frequency of its meetings and staff shortages, the plain language of section 2.06(b) does not contain an exception that authorizes a public body to delay approving and making its minutes available for public inspection based on those factors.

¹⁴E-mail from Chris Williams to Joshua Jones (December 12, 2019).

¹⁵Section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)) defines "public body" to include:

all legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

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Because the Board did not approve the minutes of the three meetings until November 12, 2019, which was after the statutory deadline for doing so, the Board violated section 2.06(b) of OMA.

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) On November 13, 2019, Mr. Steve LaRock submitted a Request for Review alleging that the Sauk Village Board of Trustees violated OMA by failing to approve the minutes of its September 10, 2019, regular meeting, September 10, 2019, special meeting, and September 17, 2019, Committee of the Whole meeting within the statutory time periods. He stated that an item on the agenda for the Board's November 12, 2019, regular meeting listed the approval of those three sets of minutes. Mr. LaRock'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 November 18, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the Village's mayor and asked the Board to provide a written answer to Mr. LaRock's allegation that it did not approve the minutes of its September 10, 2019, regular meeting in a timely manner. This office asked the Board to confirm in its answer the number of regular meetings it held between September 10, 2019, and November 12, 2019.

3) On December 11, 2019, this office received from the Village Administrator a written answer and a chart of Board meetings covering the relevant time period.

4) On December 12, 2019, an Assistant Attorney General in the Public Access Bureau asked the Village Administrator to verify whether the Board's answer also pertained to the September 10, 2019, special meeting and the September 17, 2019, Committee of the Whole meeting. He responded that it did.

5) Also on December 12, 2019, the Public Access Bureau forwarded a copy of the Board's written answer and follow-up clarification to Mr. LaRock. He replied later that day.

6) On January 3, 2020, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to February 10, 2020, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2.06(b) of OMA provides that "[a] public body shall approve the minutes of its open meeting within 30 days after that meeting or at the public body's second subsequent regular meeting, whichever is later."

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8) The language of section 2.06(b) is clear. A public body has 30 days after a meeting or until its second subsequent regular meeting, whichever is later, to approve the meeting minutes.

9) The Committee of the Whole is not a public body separate from the Board for purposes of OMA; it is the same public body meeting in a different format.

10) It is undisputed that the Board did not approve the minutes of its September 10, 2019, regular meeting, September 10, 2019, special meeting, or September 17, 2019, Committee of the Whole meeting within 30 days after each meeting. Because the Board held two subsequent regular meetings after each of those three meetings before the 30-day periods had elapsed, the deadline for the Board to approve each set of minutes was 30 days after the respective meetings.

11) Although the Board claimed that it was impossible to approve the minutes in a timely manner because of the frequency of its meetings and staffing shortages, section 2.06(b) of OMA does not contain an exception to the requirement to approve meeting minutes within 30 days after a meeting or by the public body's second subsequent regular meeting, whichever is later.

Therefore, it is the opinion of the Attorney General that the Board of Trustees of the Village of Sauk Village violated section 2.06(b) of the Open Meetings Act because it did not approve minutes of its September 10, 2019, regular meeting, September 10, 2019, special meeting, or September 17, 2019, Committee of the Whole meeting until November 12, 2019, which was after the statutory time period for doing so had expired. In accordance with these findings of fact and conclusions of law, the Board is directed to develop protocols to ensure that it approves all meeting minutes within 30 days of those meetings or at its second subsequent regular meeting, whichever is later. As required by section 3.5(e) of OMA, the Board 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)).

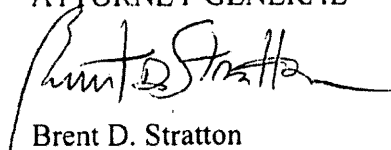
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This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2018). An aggrieved party may obtain judicial review of the 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 Steve LaRock as defendants. *See* 5 ILCS 120/7.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

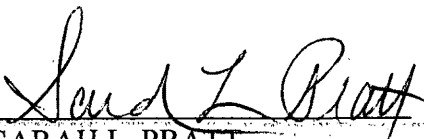
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 20-001) upon:

Mr. Steve LaRock
2444 Apache Avenue
Sauk Village, Illinois 60411
Steve.larock0265@comcast.net

The Honorable Derrick Burgess
Mayor
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411
Dburgess@SaukVillage.org

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 February 10, 2020.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548