



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

April 25, 2023

PUBLIC ACCESS OPINION 23-005
(Request for Review 2023 PAC 75460)

OPEN MEETINGS ACT:
Improper Closed Session Discussion of Various
Topics Under the Exception for Setting the Price
For Sale or Lease of Property

Ms. Melissa Grisoni
11508 Burr Oak Lane
Burr Ridge, Illinois 60527

The Honorable Kari Dillon
President
Board of Education
Lyons Township High School District 204
100 South Brainard Avenue
LaGrange, Illinois 60525

Dear Ms. Grisoni and Ms. Dillon:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the Lyons Township High School District 204 (District) Board of Education (Board) violated OMA at its January 23, 2023, regular meeting by discussing in closed session matters outside the scope of the exception, to the general requirement that public bodies conduct public business openly, in section 2(c)(6) of the Act.¹

¹ 5 ILCS 120/2(c)(6) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

BACKGROUND

On February 10, 2023, Ms. Melissa Grisoni submitted a Request for Review to the Public Access Bureau alleging that the Board violated OMA between March 1, 2022, and February 1, 2023, by holding a meeting or meetings closed to the public to discuss the sale of property owned by the District without publicly citing and voting on an exception that authorized this discussion.² Ms. Grisoni also alleged that although the Board did cite the section 2(c)(6) exception as the basis for entering closed session twice during its January 23, 2023, meeting, that exception did not authorize the Board's closed session discussions.³ Finally, she alleged that the Board had not reviewed the minutes of its closed meetings in the last six months.⁴ On February 16, 2023, the Public Access Bureau forwarded a copy of the Request for Review to the Board and asked the Board to furnish this office with copies of its meeting agendas, open and closed session minutes, and verbatim recordings of the closed session portions of Board meetings from March 1, 2022, to present.⁵ The Public Access Bureau also asked the Board to provide a written response to the allegation it exceeded the scope of section 2(c)(6) of OMA during its closed meeting on January 23, 2023.⁶

On March 8, 2023, the Public Access Bureau received the Board's written response⁷ and verbatim recordings of the closed sessions at issue.⁸ On that same date, the Public

²E-mail from Melissa Grisoni to Public Access [Bureau, Office of the Attorney General] (February 10, 2023).

³E-mail from Melissa Grisoni to Public Access [Bureau, Office of the Attorney General] (February 10, 2023).

⁴E-mail from Melissa Grisoni to Public Access [Bureau, Office of the Attorney General] (February 10, 2023).

⁵Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to the Honorable Kari Dillon, President, Board of Education, Lyons Township High School District 204 (February 16, 2023), at 2.

⁶Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to the Honorable Kari Dillon, President, Board of Education, Lyons Township High School District 204 (February 16, 2023), at 2.

⁷Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023).

⁸E-mail from Brian P. Crowley, Partner, Franczek P.C., to Ben [Silver] (March 8, 2023).

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Access Bureau forwarded the Board's written response to Ms. Grisoni.⁹ On March 14, 2023, Ms. Grisoni submitted her reply¹⁰ along with an e-mail stating she wished to limit the scope of her Request for Review to the allegation that the Board exceeded the scope of section 2(c)(6) of OMA during the closed session portions of its January 23, 2023, meeting.¹¹ On March 16, 2023, the Public Access Bureau received a copy of the closed session minutes of the Board's January 23, 2023 meeting.¹²

On April 10, 2023, this office extended the time within which to issue a binding opinion by 21 business days, to May 10, 2023, pursuant to section 3.5(e) of OMA¹³ (5 ILCS 120/3.5(e) (West 2020)).

ANALYSIS

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2020). Section 2(a) of OMA¹⁴ provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Such exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be **strictly construed, extending only to subjects clearly within their scope.**" (Emphasis added.) 5 ILCS 120/2(b) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022. The section 2(c)(6) exception permits a public body to enter into closed session to discuss only "[t]he setting of a price for sale or lease of property owned by the public body."

In its response to this office, the Board argued that its two closed session discussions on January 23, 2023, fall within the scope of section 2(c)(6). The Board explained that the discussions related to a roughly 70-acre parcel of vacant land in Willow Springs that the

⁹Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Melissa Grisoni (March 8, 2023).

¹⁰Letter from Melissa Grisoni to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 14, 2023).

¹¹E-mail from Melissa Grisoni to [Ben] Silver and [Brian] Crowley (March 14, 2023).

¹²E-mail from Brian P. Crowley, Partner, Franczek P.C., to Ben [Silver] (March 16, 2023).

¹³Letter from Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Melissa Grisoni, the Honorable Kari Dillon, President, Board of Education, Lyons Township High School District 204, and Brian P. Crowley, Partner, Franczek P.C. (April 10, 2023).

¹⁴5 ILCS 120/2(a) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

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District acquired through purchases and a donation.¹⁵ After receiving an unsolicited letter of intent to purchase the property, the Board approved at a December 22, 2022, open meeting "a sealed bid process and terms and conditions of sale, which included a minimum sales price of \$55 million along with other real estate terms."¹⁶ The Board's response to this office noted that, at the time of the January 23, 2023, meeting, it had not accepted a bid "and was considering its various options, all of which directly impact price."¹⁷ Because the Board had not accepted any bids, the response stated, the closed session discussions "concerned next steps in marketing and selling the property at a price of no less than \$55 million."¹⁸ The Board further argued:

While the entire closed session discussion did not focus on dollar figures solely, the sale of a property of this magnitude creates numerous issues for the Board to consider; all of which directly influence the price. The discussions during that evening's closed session centered on that primary topic. Any ancillary discussions or discussions that did not pertain to the exact dollar amount for the sale were so intertwined with the ultimate sale and price of the property that it is not reasonable to separate from the primary topic of price.^[19]

In support of its argument, the Board referenced a determination letter in which the Public Access Bureau declined to determine that a school board had violated OMA when its closed session discussion pursuant to the section 2(c)(5) exception²⁰ "veered into somewhat extraneous matters at times." Ill. Att'y Gen. PAC Req. Rev. Ltr. 30925, issued May 9, 2019, at 4. Additionally, the Board cited a determination letter in which the Public Access Bureau concluded that a school board did not exceed the scope of section 2(c)(6) when it "discussed the

¹⁵Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023), at 2.

¹⁶Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023), at 2.

¹⁷Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023), at 3.

¹⁸Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023), at 3.

¹⁹Letter from Brian P. Crowley, Franczek, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 8, 2023), at 4.

²⁰5 ILCS 120/2(c)(5) (West 2014).

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price of the property and options for maintaining or adjusting the property's price." Ill. Att'y Gen. PAC Req. Rev. Ltr. 63270, issued November 12, 2020.

In her reply, Ms. Grisoni argued that the scope of section 2(c)(6) is narrower than the Board contends, and, given the Board's response and the context of the meeting, the Board's discussion during the closed portions of its January 23, 2023, meeting exceeded that scope. Ms. Grisoni argued that the instant dispute is similar to the situation in a previous binding opinion, Ill. Att'y Gen. Pub. Acc. Op. No. 15-003, issued March 20, 2015, in which the Attorney General "found that the board violated section 2(a) of OMA because the general discussion of the sale of land did not fall within the narrow exception of setting a sale price."²¹

Legislative intent is best evidenced by the language used in a statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d 21, 29 (2009). We may not read into the unambiguous language of a statute exceptions, limitations or conditions that the General Assembly did not express. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990). The clear and unambiguous language of section 2(c)(6) of OMA, which must be strictly construed, does not allow a public body to discuss the sale or lease of public property in closed session other than to set a price. If the General Assembly had intended to allow closed meetings to discuss general issues concerning the sale or lease of public property, it would have written such an exception into OMA, as have other jurisdictions. *See, e.g.*, section 551.072 of the Texas Open Meetings Act (Tex. Gov't Code Ann. § 551.072 (West 2022)) ("A governmental body may conduct a closed meeting to deliberate the purchase, exchange, lease, or value of real property if deliberation in an open meeting would have a detrimental effect on the position of the governmental body in negotiations with a third person.")).

Indeed, section 2(c)(5) of OMA, which allows a public body to enter closed session to discuss "[t]he purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired[.]" directly contrasts with the significantly narrower scope of section 2(c)(6). Section 2(c)(5) of OMA allows closed session discussions concerning the relative merits of particular properties to potentially purchase or lease for the use of the public body, the attributes of those properties, and the terms of conditions of a potential sale or lease. Ill. Att'y Gen. Pub. Acc. Op. 22-012, issued September 30, 2022, at 8-9. However, neither that provision, nor section 2(c)(6), authorizes comparatively general discussions regarding the sale or lease of property already owned by a public body. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 15-003, at 5 (section 2(c)(6) of

²¹Letter from Melissa Grisoni to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau, [Office of the Attorney General] (March 13, 2023), at 3.

OMA does "not extend to the discussion of general issues concerning the disposal of publicly-owned property.").

The General Assembly's intent to create a narrow exception for setting the price of property is further evidenced in the legislative history of House Bill No. 1332, which as Public Act 88-621, effective January 1, 1995, divided the previous OMA exception, which included both acquisition of real property and selling price in a single exception, into the current section 2(c)(5) and the significantly narrower section 2(c)(6).²² Public Act 88-621 (amending 5 ILCS 120/2 (West 1994)). Public Act 88-621 also amended OMA to add the general requirement in section 2(b) that "exceptions are to be strictly construed, extending only to subjects clearly within their scope []" and mirrored that language as a statement of policy under section 1 of OMA: "The provisions for exceptions to the open meeting requirements shall be strictly construed against closed meetings." *See* Public Act 88-621 (amending 5 ILCS 120/1, 2 (West 1994)). In summarizing the amendments before the final vote in the Senate, Senator Berman stated, "[w]e have clarified certain language to define better what the subject matters are that can be held in closed session." Remarks of Sen. Berman, May 11, 1994, Senate Debate on House Bill No. 1332, at 12.

This office's confidential review of the closed session minutes and each of the closed session verbatim recordings confirmed that the Board exceeded the scope of section 2(c)(6) by discussing myriad subjects beyond setting the price for sale of the subject property. The Board's discussion is markedly more expansive than the school board discussion in the Public Access Bureau determination analyzing section 2(c)(6) that the Board cited in its response to this office. In that matter, a school board that was in the process of negotiating a property sale discussed in closed session "the setting of the price of the property in light of financial circumstances involving the Village of Lisle." Ill. Att'y Gen. PAC Req. Rev. Ltr. 63270, at 3. The Public Access Bureau determined that "discussions concerning the village are intertwined with the property's price and related directly to the Board's consideration of ways to keep the set price for the buyer." Ill. Att'y Gen. PAC Req. Rev. Ltr. 63270, at 3. Accordingly, the Public Access Bureau concluded the Board did not exceed the scope of section 2(c)(6) of OMA because "[i]t appears from the context of the Board's discussion that the circumstances involving the

²²Before Public Act 88-621 amended OMA, the exception that permitted public bodies to enter closed session to discuss real estate transactions applied to "meetings where the acquisition of real property is being considered or where the selling price of real estate is being considered[.]" 5 ILCS 120/2(c) (West 1992).

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village could not have been considered in isolation because they directly bore upon the setting of the price for sale of the property." Ill. Att'y Gen. PAC Req. Rev. Ltr. 63270, at 3.²³

In this matter, the closed session verbatim recording shows that members of the Board made clear at numerous times that the minimum price of the subject property was already set and that the Board had no imminent plans for changing the price. After the Board returned to open session to consider bids, the President of the Board confirmed that the minimum price was unchanged:

If the board votes to reject the bids tonight, the property will remain for sale at the minimum \$55 million and the board will continue to accept offers, communicate and negotiate with potential buyers in the coming weeks in order to achieve our overall goal of selling the property.^[24]

Portions of the two closed sessions touch on the price of the property in relation to current bids and the actions the Board may take following acceptance or rejection of the bids. However, while the discussions contained brief comments contemplating that it may be necessary to change the price in the future, the Board did not actively consider setting another price. Rather, the Board's discussions focused on various topics related to a property sale such as processes concerning the marketing and selling of the property that might play out upon rejection of the current bids. Although each of the topics discussed by the Board related to the potential sale of the property, they were not intertwined with the topic of setting the price for the property to the extent that they could not be discussed separately, as the Board argued. Thus, the discussion cannot be accurately described as "setting the price" for a sale of property when that term is narrowly construed in accordance with the General Assembly's clear intent.

²³The other determination cited by the Board, Ill. Att'y Gen. PAC Req. Rev. Ltr. 30925, concerned a closed session discussion under section 2(c)(5) rather than section 2(c)(6) of OMA. Based on its review of the verbatim closed session recording, the Public Access Bureau determined that the "discussion continually returned to the topic of purchasing property, though the discussion veered into somewhat extraneous matters at times[.]" and that "the portions of the discussion that could potentially be considered to exceed the scope of the exception are substantially intertwined with the portions of the discussion that fall within the scope of the exception." Ill. Att'y Gen. PAC Req. Rev. Ltr. 30925, at 4. This office did not, however, determine that the entire discussion was permissible under OMA. Instead, the Public Access Bureau observed that if any portion did exceed the scope of the section 2(c)(5) exception, there would be no further remedy because the public body had already publicly disclosed and made available the closed session verbatim recording. Ill. Att'y Gen. PAC Req. Rev. Ltr. 30925, at 4. Because the determination did not address section 2(c)(6) or conclude that a public body is permitted to discuss in closed session topics that are pertinent to but not within the scope of an exception in section 2(a) of OMA, it is not relevant to this matter.

²⁴Lyons Township High School District 204 Board of Education, Regular Meeting, January 23, 2023, Minutes 7.

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Accordingly, this office concludes that the Board's closed session discussions were not authorized by section 2(c)(6) of OMA and therefore violated section 2(a) of OMA.

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 February 10, 2023, the Public Access Bureau received a Request for Review from Ms. Melissa Grisoni alleging that the Lyons Township High School District 204 Board of Trustees violated OMA on multiple occasions, including by exceeding the scope of the exception that it cited to enter closed session twice at its January 23, 2023, meeting. Ms. Grisoni'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 2020)).

2) On February 16, 2023, the Public Access Bureau sent a copy of the Request for Review to the Board and asked the Board to provide copies of its meeting agendas, open and closed session minutes, and verbatim recordings of Board meetings from March 1, 2022, to present. The Public Access Bureau also asked the Board to provide a written response to the allegation that it exceeded the scope of section 2(c)(6) of OMA during the closed session portion of its meeting on January 23, 2023.

3) On March 8, 2023, the Public Access Bureau received the Board's written response. On that same date, the Public Access Bureau forwarded the Board's written response to Ms. Grisoni. On March 9, 2023, the Public Access Bureau received a verbatim recording of the Board's January 23, 2023, meeting.

4) On March 14, 2023, Ms. Grisoni submitted her reply to the Board's written response and limited the scope of her Request for Review to her allegation that the Board exceeded the scope of section 2(c)(6) of OMA during closed sessions at its January 23, 2023, meeting.

5) On April 10, 2023, this office extended the time within which to issue a binding opinion by 21 business days, to May 10, 2023. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c). Section 2(c)(6) permits a public body to close a portion of a meeting to discuss "[t]he setting of a price for sale or lease of property owned by the public body."

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7) On January 23, 2023, the Board closed two portions of its meeting to the public to discuss what the Board's response to this office characterized as the next steps in marketing and selling a parcel of property. The Board also discussed in closed session additional topics related to the potential sale of the property, but it did not discuss setting the price of the property.

8) The section 2(c)(6) exception did not authorize the Board to enter closed session to discuss marketing and selling the property when the discussion did not directly pertain to setting the price for sale of the property. The Board's closed session discussions considered possible courses of action and scenarios that might occur following the Board's potential rejection of bids, which do not fall within the scope of section 2(c)(6) of OMA, or any other exception to the general requirement that public bodies conduct public business openly. Therefore, this office concludes that the Board's discussions violated section 2(a) of OMA.

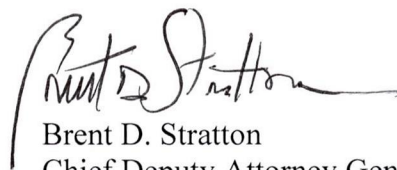
In accordance with these findings of fact and conclusions of law, the Board is directed to remedy this violation by disclosing to Ms. Grisoni and making publicly available the closed session verbatim recordings and closed session minutes of its January 23, 2023, meeting. As required by section 3.5(e) 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 2020).

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 2020). 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 Ms. Melissa Grisoni as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

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cc: Mr. Brian P. Crowley
Partner
Franczek P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606

CERTIFICATE OF SERVICE

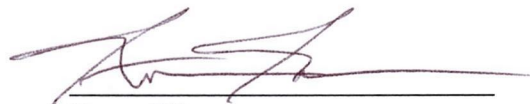
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 23-005) upon:

Ms. Melissa Grisoni
11508 Burr Oak Lane
Burr Ridge, Illinois 60527
melissagrisoni@gmail.com

The Honorable Kari Dillon
President
Board of Education
Lyons Township High School District 204
100 South Brainard Avenue
LaGrange, Illinois 60525
boe@lths.net

Mr. Brian P. Crowley
Partner
Franczek P.C.
300 South Wacker Drive, Suite 3400
Chicago, Illinois 60606
bpc@franczek.com

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 Chicago, Illinois on April 25, 2023.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
Public Access Bureau
Office of the Attorney General
100 West Randolph Street
Chicago, Illinois 60601
(312) 814-6756