



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

August 5, 2025

PUBLIC ACCESS OPINION 25-009
(Request for Review 2025 PAC 86731)

OPEN MEETINGS ACT:
Obligation to Identify Applicant for Public
Office Before Voting on Appointment

Mr. David Smith
2050 216th Street
Sauk Village, Illinois 60411

The Honorable Marva Campbell-Pruitt
Mayor
Village of Sauk Village
21801 Torrence Avenue
Sauk Village, Illinois 60411

Dear Mr. Smith and Ms. Campbell-Pruitt:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (FOIA) (5 ILCS 120/3.5(e) (West 2024)). For the reasons discussed below, this office concludes that the Village of Sauk Village Board of Trustees (Board) violated OMA by failing to provide an adequate public recital before voting on an appointment to fill a vacancy on the Board.

On May 8, 2025, Mr. David Smith submitted a Request for Review asserting that during its April 28, 2025, meeting, the Board violated section 2(e) of OMA (5 ILCS 120/2(e) (West 2024)) in connection with its vote to appoint an individual to fill a vacant trustee position.¹ Specifically, Mr. Smith asserted: "When the mayor made the motion to appoint an official for a two-year term to fill the vacant Trustee position she did not state the name of the individual that

¹E-mail from David Smith to Public Access [Bureau, Office of the Attorney General] (May 8, 2025).

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she intended to appoint. The motion was moved and seconded and brought up for vote."² The Request for Review included an internet link to a recording of the meeting.³

On May 16, 2025, the Public Access Bureau sent the Board a copy of the Request for Review along with a letter asking it to provide copies of the agenda, minutes and any audio or video recording of the Board's April 28, 2025, meeting if the Village possessed such a recording.⁴ This office also asked the Board to provide a written response to Mr. Smith's allegation which specified the wording of the public recital that preceded the vote on the appointment to fill the vacancy on the Board.⁵ On May 22, 2025, counsel for the Board furnished a written response that asserted the recording of the meeting referenced in Mr. Smith's Request for Review was "dispositive of this matter."⁶ The Board's response stated that the video showed "the motion in question failed. [Citation.] Accordingly, there is no violation of OMA because no action was taken."⁷ On May 30, 2025, this office sent a copy of the written response to Mr. Smith.⁸ On June 30, 2025, Mr. Smith submitted a reply asserting that "[t]he action that was taken was a denial of the unnamed appointment. * * *. There was a public vote that was not preliminary or temporary therefore it should be considered final."⁹

On July 7, 2025, this office extended the time within which to issue a binding opinion by 21 business days, to August 5, 2025, pursuant to section 3.5(e) of OMA.¹⁰

²E-mail from David Smith to Public Access [Bureau, Office of the Attorney General] (May 8, 2025).

³Village of Sauk Village Board of Trustees, Meeting, April 28, 2025, Video Recording, <https://drive.google.com/file/d/1HrZp-CMrchwT2OTRX-3ckeINV129a8NO/edit>.

⁴Letter from Steve Silverman, Deputy Division Chief, Public Access & Opinions Division, Office of the Attorney General, to The Honorable Marva Campbell-Pruitt, Mayor, Village of Sauk Village (May 16, 2025), at 2.

⁵Letter from Steve Silverman, Deputy Division Chief, Public Access & Opinions Division, Office of the Attorney General, to The Honorable Marva Campbell-Pruitt, Mayor, Village of Sauk Village (May 16, 2025), at 2.

⁶Letter from Jayman A. Avery III, Odelson, Murphy, Frazier & McGrath, Ltd., to Steve Silverman (May 22, 2025), at 2.

⁷Letter from Jayman A. Avery III, Odelson, Murphy, Frazier & McGrath, Ltd., to Steve Silverman (May 22, 2025), at 1.

⁸Letter from Steve Silverman, Deputy Division Chief, Public Access & Opinions Division, to David Smith (May 30, 2025).

⁹Letter from David Smith to Steve Silverman (June 6, 2025), at 2.

¹⁰Letter from Steve Silverman, Deputy Division Chief, Public Access & Opinions Division, Office of the Attorney General, to David Smith and Jayman A. Avery, Senior Counsel, Odelson, Murphy, Frazier & McGrath, Ltd. (July 7, 2025).

ANALYSIS

As a threshold matter, section 3.1-10-50(e) of the Municipal Code (65 ILCS 5/3.1-10-50(e) (West 2024)) provides that a mayor of a municipality with a population under 500,000 must appoint a qualified person to fill a vacancy on a board of trustees within 60 days after the vacancy occurs. If the board of trustees does not consent to a mayor's first appointment of a qualified person to fill a vacancy, the mayor must submit a second appointment. 65 ILCS 5/3.1-10-50(e) (West 2024). If a board of trustees also does not consent to the second appointment, "then the mayor or president or acting mayor or acting president, without the advice and consent of the corporate authorities, may make a temporary appointment from those persons who were appointed but whose appointments failed to receive the advice and consent of the corporate authorities." 65 ILCS 5/3.1-10-50(e) (West 2024). In his reply to the Board's response, Mr. Smith contended that "[t]he Mayor failed to name the first 'qualified person' that she wanted to appoint as Trustee. This is a Mandatory requirement according to (65 ILCS 5/3.1-10-50 (e). **Failure to meet the mandatory requirements should be grounds to invalidate the appointment.**"¹¹ (Emphasis in original.) According to Mr. Smith, on May 27, 2025, the Board tabled a motion to appoint Ms. Tonyia Winston to fill the vacancy on the Board.¹² He argued that the vote on Ms. Winston's appointment should be considered the first rather than the second appointment vote under the Municipal Code because the Mayor did not publicly name the individual whose appointment was considered by the Board at its April 28, 2025, meeting.¹³

The Public Access Counselor's authority is limited to reviewing alleged violations of the Freedom of Information Act¹⁴ and OMA. 15 ILCS 205/7 (West 2024). Mr. Smith's Request for Review presents two legal questions: (1) whether section 2(e) of OMA required the Board to recite the name of the candidate considered for appointment to the Board prior to the Board's public vote; and if so, (2) whether the appropriate remedy for the Board's alleged non-compliance with those provisions legally invalidates the Board's action on the first appointment under section 3.1-10-50(e) of the Municipal Code. Because the second question is governed by the Municipal Code rather than OMA, the Public Access Counselor is not authorized to determine whether failing to publicly state the name of the individual whose appointment the Board considered at the April 28, 2025, meeting rendered the Board's vote on that appointment invalid under the Municipal Code. Therefore, this opinion is limited to reviewing whether the Board violated OMA and, if so, whether there is any necessary action for the Board to take to comply with the directive of this opinion. 5 ILCS 120/3.5(e) (West 2024).

¹¹Letter from David Smith to Steve Silverman (June 6, 2025), at 1.

¹²Letter from David Smith to Steve Silverman (June 6, 2025), at 1.

¹³Letter from David Smith to Steve Silverman (June 6, 2025), at 2.

¹⁴5 ILCS 140/1 *et seq.* (West 2024).

Final Action

The public policy of this State, as declared in section 1 of OMA (5 ILCS 120/1 (West 2024)), is "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." Section 2(e) of OMA effectuates that public policy by providing: "No final action may be taken at a closed meeting. Final action 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."

In its response to this office, the Board contended that it did not violate OMA because the Board did not approve the appointment motion at the April 28, 2025, meeting. The Board stated that only five members were present at the meeting because of a vacancy on the Board,¹⁵ and that section 1.02 of OMA (5 ILCS 120/1.02 (West 2024)) provides that "the affirmative vote of 3 members [of a 5-member public body] is necessary to adopt any motion, resolution, or ordinance, unless a greater number is otherwise required." Therefore, the Board asserted that "[t]he 3-2 vote here against the Motion does not and cannot constitute an 'affirmative vote of 3 members to adopt the Motion.' Thus, there is no affirmative action taken here that can be 'undone.'"¹⁶ In support of that argument, the Board cited *Howe v. The Retirement Board of the Firemen's Annuity and Benefit Fund of Chicago*, 2013 IL App (1st) 122446.

In *Howe*, a pension board held a meeting and voted by a margin of 5-2 against a motion to approve an application for a disability benefit, and then mailed the applicant a written decision denying the application three weeks later without conducting a subsequent vote to deny the application. *Howe*, 2013 IL App (1st) 122446, ¶¶ 13-14. The court rejected the pension board's argument that it reached a final decision by voting against the motion to approve the application, emphasizing "that the written decision must be prepared and provided to each board member at or before the time the Board votes to take final action on the application. The Board's only decision is the written version, since that is the decision setting forth its findings of fact, reasoning, and analysis that judges consider during the administrative review process." *Howe*, 2013 IL App (1st) 122446, ¶ 25. The court added that "[n]o public body in Illinois subject to the Open Meetings Act can take final action by merely circulating some document for signature and not voting on it publicly." *Howe*, 2013 IL App (1st) 122446, ¶ 27. Because the pension board did not approve the written decision denying the application during a meeting, the court held that "[t]he Board never took final action under the Open Meetings Act[.]" *Howe*, 2013 IL App (1st) 122446, ¶ 32.

¹⁵Letter from Jayman A. Avery III, Odelson, Murphy, Frazier & McGrath, Ltd., to Steve Silverman (May 22, 2025), at 2.

¹⁶Letter from Jayman A. Avery III, Odelson, Murphy, Frazier & McGrath, Ltd., to Steve Silverman (May 22, 2025), at 2.

Contrary to the Board's argument, the court in *Howe* did not find that only votes to adopt motions or approve actions are final actions subject to the requirements of section 2(e) of OMA. The ruling turned on specific requirements for pension board decisions on applications for disability benefits. Referencing the section of the Pension Code that governed the pension board's proceedings and required "the affirmative vote of a majority of the total membership of the board"¹⁷ to grant a disability benefit along with the board's own rules requiring it to issue written decisions¹⁸ like the one that was ultimately sent to the applicant, the court held that the failed approval vote could not be construed as final action to issue a written decision denying the disability benefit. *Howe* has no relevance to whether the Board's vote on an appointment to fill a vacancy on the Board constituted a "final action" subject to the requirements of section 2(e) of OMA.

The Board also cited Binding Opinion 19-004, in which this office concluded that a school board violated section 2(e) of OMA by failing to provide an adequate public recital of a motion to approve a notice of remedy issued to an unidentified teacher and directed the school board to reconsider and re-vote on the underlying resolution. Ill. Att'y Gen. Pub. Acc. Op. No. 19-004, issued May 17, 2019, at 6-7. The Board argued: "Since no affirmative action to adopt the Motion in our case happened, there is nothing to reconsider or re-vote on."¹⁹ (Emphasis in original.) Although the motion at issue in Binding Opinion 19-004 was approved and the notice of remedy was issued to the teacher, nothing in that opinion limits the application of section 2(e) of OMA solely to final action votes that succeed.

The Board's argument to this office appears to conflate the question of whether section 2(e) of OMA applied to the Board's April 28, 2025, vote with the question of whether there is a potential remedy to address a violation that may have occurred at that meeting. As discussed above, Mr. Smith's request to invalidate the vote on the appointment at the April 28, 2025, meeting for purposes of section 3.1-50(e) of the Municipal Code is beyond the scope of the Public Access Counselor's authority. Further, ordering a public body to revote is a discretionary remedy rather than a remedy that must be imposed to conclude that a public body violated OMA. See 5 ILCS 120/3(c) (West 2024) (authorizing a court that determines a public body violated OMA to "grant such relief as it deems appropriate[.]"). Whether an allegedly improper final action was approved or denied or may be invalidated does not preclude a finding that the Board's vote constituted a "final action" to which section 2(e) of OMA applied.

The requirements of section 2(e) of OMA apply to all final actions taken by a public body. The Act does not define "final action." In considering whether a public body took final action in closed session by polling members before holding a vote in open session, the Illinois Appellate Court emphasized that final actions must be taken openly to ensure that

¹⁷40 ILCS 5/6-178 (West 2010).

¹⁸*Howe*, 2013 IL App (1st) 122446, ¶ 19.

¹⁹Letter from Jayman A. Avery III, Odelson, Murphy, Frazier & McGrath, Ltd., to Steve Silverman (May 22, 2025), at 2.

members of public bodies are accountable to the public for their decisions: "Since a public roll call vote allows the people to know the positions taken by the individual members of the Board, so such members can be held accountable for their actions, we feel that the 'final action' is the roll call vote." *Jewell v. Board of Education of Community Unit School District No. 300*, 19 Ill. App. 3d 1091, 1094 (1974). The appellate court also has held that reaching a consensus in closed session to request mediation to resolve a labor dispute did not constitute final action because it was "not an end in itself, but rather, a means to an end. Negotiations and mediations are made up of many 'unilateral' decisions, such as what to offer or counteroffer, and to hold that each of the unilateral strategic decisions that make up the constituent parts of a negotiation is in and of itself a final action is unreasonable." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 176 (1989). Collectively, and when considered in conjunction with the purpose of OMA, these cases stand for the proposition that decisions which bring matters to a resolution—regardless of the outcome of the vote—constitute final actions that must be made transparently because the public has a right to know how public officials conducted themselves.

The Board's April 28, 2025, vote on the proposed appointee resolved whether or not that individual would fill the vacancy on the Board. While the Board did not make a final decision on filling the vacancy at that meeting, it did decide not to fill the vacancy with the proposed appointee. Because that vote constituted a final action subject to the requirements of section 2(e) of OMA, this office must determine whether the Board provided an adequate public recital before voting.²⁰

Public Recital

In *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343, ¶ 64, the Illinois Supreme Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." In that case, a school board's public recital of a separation agreement with its superintendent consisted of the school board president stating that the board was considering an agenda item for "'approval of a resolution regarding the separation agreement[,]'" as well as reciting the entire text of the resolution itself. *Springfield School District*, 2017 IL 120343, ¶ 81. The Court concluded that the school board's public recital was sufficient, stating: "The Board president recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient to identify the particular transaction—the

²⁰This office also notes that section 2(e) is not the only provision of OMA that notifies the public of final actions. Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2024)) also requires each public body to post an agenda before each meeting that "set[s] forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." (Emphasis added.) If only those resolutions and ordinances *approved* at meetings constituted final actions, this requirement would be unworkable because public bodies could not determine which resolutions and ordinances to include on agendas without knowing the outcome of its votes in advance.

separation agreement was between Dr. Milton and the Board." *Springfield School District*, 2017 IL 120343, ¶ 83.

In contrast, the Attorney General has issued a binding opinion that concluded a school board violated section 2(e) by voting to dismiss an employee identified as "Employee A" in the motion that preceded the vote. Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013, at 4. Although the Board disclosed the "general nature of the matter being considered from the motion," the Attorney General explained that "the public was deprived of any meaningful information concerning the practical effect of the Board's decision. * * * By declining to identify the subject of the dismissal by name, the Board did not fully comply with the requirements of section 2(e) of OMA that it 'inform the public of the business being conducted.'" Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, at 4.

This office has reviewed the minutes of the Board's April 28, 2025, meeting and the recording provided by Mr. Smith which the Board relied upon in its response to this office. The minutes indicate the following exchange before the Board voted on the proposed appointee: "Mayor Marva asked for a motion to appoint an official to a two-year term to fill the vacant trustee position. The motion was moved by Trustee Aretha Burns and seconded by trustee Diane Sapp."²¹ In the recording, the mayor stated that there was a vacancy because a Board member had been elected village clerk. The mayor then stated: "So I would like to call for a motion to appoint an official for a two-year term to fill the vacant trustee position. May I have the motion?" A Board member made the motion and it was seconded. The mayor then asked if "there are any questions for debate." No one responded. The Board held an initial vote, after which a trustee indicated that they wanted to change their vote. The Board then held a second vote and rejected the unnamed proposed appointee by a 3-2 vote.²²

The public recital that preceded the Board's vote indicated only that the Board would consider whether to appoint an individual to fill a vacancy on the Board. Although the reference to the appointment of a trustee announced the general nature of the matter under consideration, the public recital lacked information that was essential to inform the public of the particular "business being conducted." Because the recital did not name or identify in any manner the individual whose appointment the Board considered, the public was left in the dark as to whom the mayor proposed to fill the vacancy and whose appointment the Board rejected. The failure to identify that individual precluded the public from assessing the mayor's proposed appointee and the Board's decision to reject them. It also precluded the public from comparing the unnamed individual's qualifications to the second proposed appointee that the Board tabled at the May 27, 2025, meeting. In light of OMA's intent of ensuring that the public is "informed as

²¹Village of Sauk Village Board of Trustees, Special Board Meeting of the Corporate Authorities, April 28, 2025, Minutes [2].

²²Village of Sauk Village Board of Trustees, Meeting, April 28, 2025, Video Recording, <https://drive.google.com/file/d/1HrZp-CMrchwT2OTRX-3ckEINV129a8NO/edit>.

to the conduct of their business[.]"²³ it would be absurd to construe section 2(e) of OMA as permitting a public body to vote on whether to appoint an individual to a public office without publicly identifying that individual. *People v. Latona*, 184 Ill. 2d 260, 269 (1998) (a reviewing body "has a duty to avoid a construction of the statute that would defeat the statute's purpose or yield an absurd or unjust result."). Accordingly, this office concludes that the Board violated section 2(e) 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 May 8, 2025, Mr. David Smith submitted a Request for Review alleging that the Village of Sauk Village Board of Trustees violated OMA by improperly taking final action during its April 28, 2025, meeting. Specifically, Mr. Smith alleged that the Board voted on an appointment to fill a vacancy on the Board without naming or otherwise identifying the proposed appointee. Mr. Smith included an internet link to a recording of the meeting.

2) On May 16, 2025, the Public Access Bureau sent a copy of the Request for Review to the Board and asked it to provide copies of the agenda, minutes, and any audio or video recording of the April 28, 2025, meeting along with a written response to Mr. Smith's allegation.

3) On May 22, 2025, counsel for the Board provided a written response that stated no meeting minutes had been compiled. The response asserted that the recording of the meeting that Mr. Smith submitted with his Request for Review demonstrated that the Board did not improperly take action in violation OMA because it showed that the Board did not approve the motion to appoint the individual to fill the vacancy on the Board.

4) On May 30, 2025, the Public Access Bureau forwarded a copy of the District's written response to Mr. Smith and notified him of his right to reply.

5) On June 6, 2025, Mr. Smith submitted a reply.

6) On July 7, 2025, the Public Access Bureau extended the time within which to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA. Accordingly, the Attorney General may properly issue a binding opinion with respect to this matter.

7) Section 2(e) of OMA provides: "No final action may be taken at a closed meeting. Final action 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."

²³5 ILCS 120/1 (West 2024).

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8) For purposes of section 2(e), "final action" is a decision that resolves a matter, regardless of whether the public body votes in favor or against the underlying motion.

9) Because the Board's vote on the proposed appointment during the April 28, 2025, meeting resolved whether or not that individual would fill the vacancy on the Board, the vote constituted a "final action" subject to the requirements of section 2(e) of OMA.

10) Section 2(e) requires that a public body provide a public recital that identifies the general nature of the matter under consideration and specific detail sufficient to identify the particular transaction or issue that is the subject of final action.

11) The public recital that preceded the Board's vote indicated only that the Board would consider whether to appoint an individual to fill a vacancy on the Board. The public recital did not name or identify the proposed appointee in any manner. Although the Board identified the general nature of the matter under consideration, the failure to identify the proposed appointee rendered the public recital inadequate because it deprived the public of a detail that was essential to inform the public of the business being conducted.

12) Therefore, the Attorney General concludes that the Board violated the requirements of section 2(e) of OMA in connection with its April 28, 2025, meeting.

In accordance with these findings of fact and conclusions of law, the Board is directed to take immediate and appropriate action to remedy its violation of section 2(e) of OMA by amending the approved minutes of the April 28, 2025, meeting to include the name of the proposed appointee.

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 2024). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. David Smith as defendants. *See* 5 ILCS 120/7.5 (West 2024).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Nathalina Hudson
Chief of Staff

Mr. David Smith
The Honorable Marva Campbell-Pruitt
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cc: Mr. Jayman A. Avery
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CERTIFICATE OF SERVICE

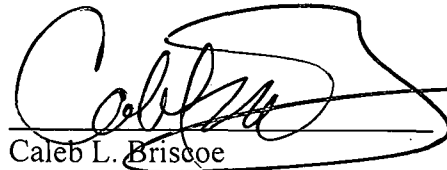
Caleb L. Briscoe, Assistant Attorney General, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 25-009) upon:

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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 August 5, 2025.



Caleb L. Briscoe
Assistant Attorney General

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