



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

April 23, 2013

PUBLIC ACCESS OPINION 13-003
(Request for Review 2013 PAC 23177)

OPEN MEETINGS ACT:
Taking Final Action at Closed
Session Prohibited

Mr. David Beck
Field Service Director
Illinois Federation of Teachers
4 Lawrence Square
Springfield, Illinois 62704

Ms. Darcie Shinberger,
Chief FOIA Officer
Western Illinois University
University Relations Office
Sherman Hall 302
1 University Circle
Macomb, Illinois 61455

Dear Mr. Beck and Ms. Shinberger:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2010)). For the reasons discussed below, this office concludes that on January 15, 2013, the Western Illinois University Board of Trustees (Board) violated section 2(e) of OMA (5 ILCS 120/2(e) (West 2011 Supp.), as amended by Public Acts 97-813, effective July 13, 2012; 97-876, effective August 1, 2012) by taking final action on an employment matter during a closed meeting.

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BACKGROUND

On January 30, 2013, Mr. David Beck submitted a Request for Review to the Public Access Bureau alleging that the Board improperly voted to terminate the employment of a tenured University faculty member during a portion of its January 15, 2013, meeting that was closed to the public.¹ On February 4, 2013, the Public Access Bureau forwarded a copy of the Request for Review to the University's FOIA Officer and asked that an appropriate representative of the University provide a written response to the allegation and copies of the agenda and minutes of the Board's January 15, 2013, meeting.²

On February 11, 2013, the FOIA Officer for Western Illinois University (WIU) responded on behalf of the Board by providing the meeting agenda, the open session minutes, summary executive session minutes, and a compact disc containing the verbatim audio recording of the open and closed session proceedings. In its response, WIU did not discuss the allegation in the Request for Review.³

On February 26, 2013, this office forwarded a copy of the cover letter of the Board's response to Mr. Beck.⁴ Mr. Beck did not reply. On March 28, 2013, this office properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA.⁵

¹E-mail from David Beck to Public Access Bureau, Office of the Attorney General (January 30, 2013).

²Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, to Darcie Shinberger, Chief FOIA Officer, Western Illinois University (February 4, 2013).

³Letter from Darcie Shinberger, FOIA Officer, Assistant Vice President, Advancement & Public Services, Western Illinois University, to Christopher Boggs, Assistant Attorney General, Public Access Bureau (February 11, 2013).

⁴Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, to David Beck, Illinois Federation of Teachers (February 26, 2013). The Public Access Counselor is required to keep the minutes and recordings of the closed sessions confidential under section 3.5(g) of OMA (5 ILCS 120/3.5(g) (West 2010)).

⁵Letter from Christopher R. Boggs, Assistant Attorney General, Public Access Bureau, to David Beck, Illinois Federation of Teachers, and Darcie Shinberger, Chief FOIA Officer, Western Illinois University (March 28, 2013).

ANALYSIS

Section 2(e) of OMA

Section 2 of OMA provides, among other things, that a public body may hold a closed meeting or close a portion of a meeting to consider the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body." Section 2(e) of OMA, however, provides that "[n]o final action may be taken at a closed meeting" and that "[f]inal 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."

The Public Access Bureau has reviewed the minutes of both the open and closed portions of the January 15, 2013, meeting, as well as the complete audio recording of the open and closed sessions. The meeting was convened at 11:05 a.m. by Board Chair William Epperly. At 11:05 a.m., the Chair moved to close the meeting to the public to consider "personnel, legal, collective bargaining and other such issues as covered by Section 2.c. of the Illinois Open Meetings Act with plans to reconvene in open session after the conclusion of the Executive Session."⁶ After engaging in a discussion during the closed session, the Board moved to approve a recommendation that a faculty member be terminated.⁷ An unidentified Board member questioned whether a roll call vote should be conducted in open session.⁸ After discussing whether action on the employment matter must be taken in open session, the Board voted to terminate the employment of the faculty member. The "executive session" was adjourned at 12:29 p.m., and the Board reconvened to open session at 12:31 p.m. No mention of the faculty member's termination was made in open session. The meeting was adjourned at 12:32 p.m.

Based on our review of the materials provided, on January 15, 2013, the Board voted to terminate an employee during a closed meeting. The plain language of section 2(e) of OMA clearly prohibits a public body from taking final action on any matter during a closed meeting. There is no exception for employment-related decisions.

Accordingly, this office concludes that the Board violated section 2(e) of OMA by improperly taking final action during a closed meeting on January 15, 2013.

⁶Western Illinois University Board of Trustees Meeting, January 15, 2013, Minutes 1.

⁷Western Illinois University Board of Trustees, Executive Session, January 15, 2013, Compact Disc, at 01:18:55 (on file with the Public Access Bureau).

⁸Western Illinois University Board of Trustees, Executive Session, January 15, 2013, Compact Disc, at 01:19:12 (on file with the Public Access Bureau).

FINDINGS AND CONCLUSIONS

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

1) On January 15, 2013, the Board met in a closed session and took a final action by voting to terminate the employment of a tenured University faculty member.

2) On January 30, 2013, Mr. David Beck submitted to the Public Access Bureau a Request for Review alleging that the Board improperly voted on a personnel matter during a closed meeting on January 15, 2013. Mr. Beck'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 2010)). The Public Access Counselor extended the time to issue a binding opinion by 21 business days. Therefore, the Attorney General may properly issue a binding opinion with respect to Mr. Beck's Request for Review.

3) On February 4, 2013, the Public Access Bureau determined that further action was warranted and sent a letter to the University requesting a response to Mr. Beck's allegation and copies of records relating to the January 15, 2013, meeting. On February 11, 2013, the University responded and provided copies of pertinent records. The University's response did not discuss the allegation in the Request for Review, however.

4) Section 2(e) of OMA provides that "[n]o final action may be taken at a closed meeting" and that "[f]inal 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."

By voting to terminate the employment of a faculty member during closed session at its January 15, 2013, meeting, and not informing the public of its proposed action prior to that vote, it is the opinion of the Attorney General that the Western Illinois University Board of Trustees has violated section 2(e) of OMA. Accordingly, the Board is directed to: 1) Include the termination of the employee in question on the agenda of its next available meeting, if termination by the Board is still sought, address the termination of the faculty member during open session, and provide the public with an adequate explanation of the nature of its action before any vote on the termination; and 2) conduct its future meetings in full compliance with OMA. 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 initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2010)).

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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 2010). 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 Mr. David Beck as defendants. *See* 5 ILCS 120/7.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By:



Michael J. Luke
Counsel to the Attorney General