



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

December 1, 2023

PUBLIC ACCESS OPINION 23-014
(Request for Review 2023 PAC 78444)

OPEN MEETINGS ACT:
Taking Final Action in Closed Session

The Honorable James Johnson
Trustee
Village of Skokie
5127 Oakton Street
Skokie, Illinois 60077

The Honorable George Van Dusen
Mayor
Village of Skokie
5127 Oakton Street
Skokie, Illinois 60077

Dear Mr. Johnson and Mr. Van Dusen:

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 2022)). For the reasons discussed below, this office concludes that the Village of Skokie (Village) Board of Trustees (Board) violated section 2(e) of OMA¹ by taking final action during the closed session portion of its October 2, 2023, meeting.

BACKGROUND

On October 4, 2023, Board Trustee James Johnson submitted a Request for Review to the Public Access Bureau alleging that the Board improperly voted to approve the

¹ 5 ILCS 120/2(e) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

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closed session minutes of its June 5, 2023, meeting during the closed session portion of its October 2, 2023, meeting.²

On October 13, 2023, the Public Access Bureau sent a copy of the Request for Review to Mayor George Van Dusen, in his capacity as the head of the Board. The Public Access Bureau also sent the Board a letter requesting a written response to Trustee Johnson's allegations, together with copies of the notice, agenda, minutes (both open and closed), and closed session verbatim recording for the October 2, 2023, meeting.³ In a letter dated October 19, 2023, the Mayor provided this office with copies of the requested materials, including a redacted written answer⁴ and an unredacted written answer for this office's confidential review.⁵

On November 1, 2023, the Public Access Bureau forwarded a copy of the Board's redacted written answer to Trustee Johnson and notified him of his opportunity to reply.⁶ Later that same day, Trustee Johnson submitted a reply.⁷

ANALYSIS

Section 2(a) of OMA⁸ requires public bodies to conduct public business openly unless considering a subject that is among the enumerated exceptions to that requirement in section 2(c) of the Act.⁹ One of those exceptions authorizes public bodies to hold a closed meeting or close a portion of a meeting for the purpose of "[d]iscussion of minutes of meetings

²E-mail from James Johnson to Leah Bartelt, Public Access Counselor, Office of the Attorney General (October 4, 2023).

³Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to The Honorable George Van Dusen, Mayor, Village of Skokie (October 13, 2023).

⁴Section 3.5(c) of OMA (5 ILCS 120/3.5(c) (West 2022)) provides that "the public body may * * * furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue."

⁵Letter from Mayor George Van Dusen, Village of Skokie, to Christopher Boggs, Deputy Public Access Counselor, Public Access Bureau, [Office of the Attorney General] (October 19, 2023).

⁶Letter from Christopher R. Boggs, Deputy Public Access Counselor, Public Access Bureau, Office of the Attorney General, to The Honorable James Johnson, Trustee, Village of Skokie (November 1, 2023).

⁷E-mail from James Johnson to Christopher Boggs (November 1, 2023).

⁸5 ILCS 120/2(a) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

⁹5 ILCS 120/2(c) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06."¹⁰ 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 non-confidential portion of the Board's answer denied that the Board violated OMA during the closed session portion of its October 2, 2023 meeting,¹¹ but the entirety of its reasoning in support of that assertion was provided confidentially. This office has reviewed the allegations in Trustee Johnson's Request for Review, the minutes of both the open and closed portions of the October 2, 2023, meeting, as well as the entirety of the verbatim recording of the October 2, 2023, closed session. The October 2, 2023, open session meeting minutes¹² reflect that the Board adjourned its open session at 8:10 p.m. to convene in closed session for the review and discussion of pending litigation under section 2(c)(11) of OMA.¹³ The closed session verbatim recording confirms the allegations in Trustee Johnson's Request for Review, which stated that during the relevant portion of the closed session meeting, the Board approved the June 5, 2023, closed session minutes, with Trustee Johnson abstaining.¹⁴ Following additional closed session discussion that is not at issue in this matter, the Board adjourned its closed session at 8:20 p.m.¹⁵ The October 2, 2023, open session meeting minutes do not indicate that the Board took any vote in open session with regards to the approval of the June 5, 2023, closed session minutes or otherwise reconvened in open session following the adjournment of the closed session.

¹⁰ ILCS 120/2(c)(21) (West 2022), as amended by Public Act 103-311, effective July 28, 2023.

¹¹Letter from Mayor George Van Dusen, Village of Skokie, to Christopher Boggs, Deputy Public Access Counselor, Public Access Bureau (October 19, 2023), at 2.

¹²Village of Skokie Board of Trustees, Regular Meeting, October 2, 2023, Minutes 3.

¹³ ILCS 120/2(c)(11) (West 2022), as amended by Public Act 103-311, effective July 28, 2023). Although not alleged as a violation in Trustee Johnson's Request for Review, the meeting minutes do not also cite the section 2(c)(21) exception as a basis for the Board's closed session discussion. Section 2a of OMA (5 ILCS 120/2a (West 2022)) requires public bodies to publicly cite "the specific exception contained in Section 2 of this Act which authorizes the closing of the meeting to the public" before voting to enter closed session, and to record and enter that exception in the meeting minutes.

¹⁴Village of Skokie Board of Trustees, Closed Session, October 2, 2023, MP3 Audio File, at 00:03:45 (on file with the Public Access Bureau).

¹⁵Village of Skokie Board of Trustees, Regular Meeting, October 2, 2023, Minutes 3.

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The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *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 Orland Fire Protection District*, 2012 IL 110012, ¶ 56. If the language of a statute 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 Department of Financial & Professional Regulation*, 2014 IL 116023, ¶ 16. "[L]ikewise, [a reviewing body] may not add provisions under the guise of interpretation." *Glynn v. Dep't of Corrections*, 2023 IL App (1st) 211657, ¶ 27. "[D]ifferent sections of the same statute should be read together and construed harmoniously." *Collinsville Community Unit School District No. 10 v. Regional Board of School Trustees of St. Clair County*, 218 Ill. 2d 175, 185-86 (2006).

As discussed above, section 2(e) of OMA expressly provides that "**[n]o 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." (Emphasis added.) The requirement that public bodies take final action openly and the prohibition against taking final action in closed session could not be more clearly stated and do not contain an exception for final action on approving closed session minutes. Although section 2(c)(21) of OMA provides that closed session minutes may be discussed in closed session "for purposes of approval by the body," the plain language of the exception does not state that the approval itself may occur in closed session. Sections 2(c)(21) and 2(e) of OMA may be read together and construed harmoniously to mean public bodies may enter closed session to discuss *whether* to approve closed session minutes before returning to open session to take final action on the approval of those minutes. Such a construction is consistent with the plain language of each provision and gives effect to both of them.

Further, taking action openly to approve closed session minutes does not compromise a public body's ability to maintain the confidentiality of the substance of closed session discussions. The Illinois Supreme Court has ruled that the public recital required by section 2(e) of OMA before a public body takes final action 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." *Board of Education of Springfield School District No. 186 v. Attorney General of Illinois*, 2017 IL 120343, ¶ 64. A public body may satisfy that requirement by simply making a motion to approve closed session minutes of a meeting held on particular date, without revealing details of the underlying matters

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discussed in closed session.¹⁶

OMA does permit a public body to take a preliminary vote in closed session followed by a final vote in open session. *Board of Education of Springfield School District No.*, 2017 IL 120343, ¶ 73 ("[T]he statute contains no bar to a public body's taking a preliminary vote at a closed meeting."); *see also Jewell v. Board of Education, Du Quoin Community Unit Schools, District No. 300*, 19 Ill. App. 3d 1091, 1095 ("The statute does not prohibit the Board from polling its members at a closed session. Thus the fact that there were two votes taken, one at the closed and one at the open session, should not be considered a violation of the open meeting law. The crucial fact is that the final vote was taken at an open session."). In this matter, however, there was nothing tentative about the Board's vote to approve closed session minutes during the closed session portion of its October 2, 2023, meeting, and the Board did not return to open session to take final action to approve the closed session minutes.

Finally, a vote to approve closed session minutes is final action despite the fact that public bodies are also obligated to review closed session minutes every six months, as required by section 2.06(d) of OMA,¹⁷ to determine whether they continue to require confidential treatment. As noted above, section 2(c)(21) permits closed session discussion of closed session minutes "for purposes of approval by the body of the minutes **or** semi-annual review of the minutes as mandated by Section 2.06." (Emphasis added.) The Board's future compliance with section 2.06(d) is therefore a separate and distinct final action from its approval of the minutes themselves.

Accordingly, this office concludes that the Board violated section 2(e) of OMA by taking final action to approve closed session minutes during the closed session portion of its October 2, 2023, meeting.

¹⁶This office also notes that the agenda of the Board's October 2, 2023, meeting did not contain an agenda item concerning the approval of closed session minutes as required by section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2022)), which 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." Including the general subject matter of the approval of closed session minutes on the October 2, 2023, meeting agenda, in accordance with section 2.02(c) of OMA, would not have required the Board to reveal the substance of any confidential matters discussed in closed session.

¹⁷5 ILCS 120/2.06(d) (West 2022) (requiring public bodies to review closed session minutes "every 6 months, or as soon thereafter as is practicable, taking into account the nature and meeting schedule of the public body[,] and to report "in an open session that (1) the need for confidentiality still exists as to all or part of those minutes or (2) that the minutes or portions thereof no longer require confidential treatment and are available for public inspection.").

FINDINGS AND CONCLUSIONS

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

- 1) On October 4, 2023, Board Trustee James Johnson submitted a Request for Review to the Public Access Bureau alleging that the Board improperly voted to approve the closed session minutes of its June 5, 2023, meeting during the closed session portion of its October 2, 2023, meeting. Trustee Johnson's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA.
- 2) On October 13, 2023, the Public Access Bureau sent a copy of the Request for Review to the Board. The Public Access Bureau also sent the Board a letter requesting a written response to Trustee Johnson's allegations, together with copies of the notice, agenda, minutes (both open and closed), and closed session verbatim recording for the October 2, 2023, meeting.
- 3) In a letter dated October 19, 2023, Mayor George Van Dusen, on behalf of the Board, provided this office with copies of the requested materials, including a redacted written answer and an unredacted written answer for this office's confidential review
- 4) On November 1, 2023, the Public Access Bureau forwarded a copy of the Board's redacted written answer to Trustee Johnson and notified him of his opportunity to reply. Later that same day, Trustee Johnson submitted a reply.
- 5) Section 2(c)(21) of OMA allows a public body to hold a closed meeting or close a portion of a meeting for the purpose of "[d]iscussion of minutes of meetings lawfully closed under this Act, whether for purposes of approval by the body of the minutes or semi-annual review of the minutes as mandated by Section 2.06."
- 6) 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." Section 2(e) does not contain an exception that permits a public body to take final action to approve closed session meeting minutes during the closed session portion of a meeting.
- 7) The Board voted to approve the closed session minutes of its June 5, 2023, meeting during the closed session portion of its October 2, 2023, meeting. That vote was not a preliminary poll or a tentative consensus; the Board did not ratify the approval of the closed session minutes during the open session of its October 2, 2023, meeting.

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8) Accordingly, the Attorney General concludes that the Board violated section 2(e) of OMA by taking final action during the closed session portion of its October 2, 2023, meeting.

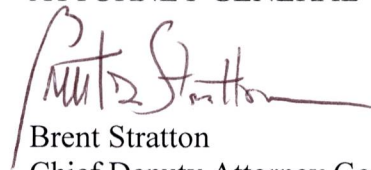
In accordance with these findings of fact and conclusions of law, the Board is directed to include the approval of the June 5, 2023, closed session minutes on the agenda of its next regular meeting, and provide the public with an adequate public recital before any vote on the approval of those minutes. 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 2022).

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 2022). 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. James Johnson as defendants. *See* 5 ILCS 120/7.5 (West 2022).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent Stratton
Chief Deputy Attorney General

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 23-014) upon:

The Honorable James Johnson
Trustee
Village of Skokie
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Skokie, Illinois 60077
jamesforskokie@gmail.com

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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 Chicago, Illinois on December 1, 2023.



STEVE SILVERMAN
Chief, Public Access Bureau

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