



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

February 15, 2018

*Via electronic mail*

Mr. Doug Nelson  
President, Nelson Enterprises  
wspynews@gmail.com

*Via electronic mail*

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RE: OMA Request for Review – 2016 PAC 44489

Dear Mr. Nelson and Ms. Tappendorf:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons stated below, the Public Access Bureau concludes that the Advisory Board (Advisory Board) of the DeKalb County Enterprise Zone (Enterprise Zone) is a public body for purposes of OMA and thus violated the requirements of the Act in connection with its meeting held on or about August 18, 2016.

On October 11, 2016, Mr. Doug Nelson, on behalf of WSPY News (WSPY), submitted this Request for Review alleging that the Advisory Board had failed to adhere to the requirements of OMA in connection with its meeting held on or about August 18, 2016. Mr. Nelson stated that when WSPY had requested notice of Advisory Board meetings, the Advisory Board had responded that it would not allow the public or the press to attend its meetings because it did not believe that it was a public body subject to OMA. Mr. Nelson contended that the Advisory Board is a public body because its "primary purpose \* \* \* is to determine if

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applications for real estate and sales tax abatement are sufficient to receive abatement of taxes[,] and thus the Advisory Board has "control of the public purse[.]"<sup>1</sup>

On October 25, 2016, this office sent a copy of the Request for Review to the Advisory Board and asked it to provide this office with copies of its organizing documents, together with a detailed written response to Mr. Nelson's allegation that it is a public body subject to the requirements of OMA. On November 4, 2016, outside counsel for the DeKalb County Economic Development Corporation (EDC) provided this office with copies of three DeKalb County Board (County Board) resolutions pertaining to the Advisory Board<sup>2</sup> and a written response. On November 21, 2016, Mr. Nelson submitted a reply.

#### DETERMINATION

"In order that the people shall be informed, the General Assembly finds and declares that it is the intent of [OMA] to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (2016).

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2016)) defines a "public body" as:

[A]ll 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.

In its response to this office, the EDC stated that as an initial matter, "the Enterprise Zone is not an entity, private or public. Instead, the Enterprise Zone is a 'zone' that is designated and established over a specific area pursuant to the Illinois Enterprise Zone Act" (20

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<sup>1</sup>E-mail from WSPY News to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 6, 2016).

<sup>2</sup>County of DeKalb, *Establishing the DeKalb County Enterprise Zone*, Resolution R2014-76 (Nov. 19, 2014); County of DeKalb, *Adopting the DeKalb County Enterprise Zone Intergovernmental Agreement*, Resolution R2014-77 (Nov. 19, 2014); County of DeKalb, *Appointing the DeKalb County Economic Development Corporation as the Zone Administrator for the DeKalb County Enterprise Zone*, Resolution R2014-78 (Nov. 19, 2014).

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ILCS 655/1 *et seq.* (West 2016)).<sup>3</sup> In contrast, the EDC acknowledged that the Advisory Board is a "body," but argued that "it is a *private* one that provides contractual services to certain government bodies pursuant to a contract for services." (Emphasis in original.)<sup>4</sup>

The EDC then discussed the Advisory Board's implementing resolutions. DeKalb County Resolution R2014-76, which initiated the Enterprise Zone, provides that certain "Designating Units of Government"—the DeKalb County Board, Cortland Town Council, DeKalb City Council, Genoa City Council, Sandwich City Council, Sycamore City Council, and Waterman Village Board—determined that it was necessary for the region to obtain the enterprise zone designation.<sup>5</sup> The enterprise zone designation application process is administered by the Illinois Department of Commerce and Economic Opportunity,<sup>6</sup> subject to the approval of the State's Enterprise Zone Board.<sup>7</sup> However, "[t]he administration of an Enterprise Zone shall be under the jurisdiction of the designating municipality or county."<sup>8</sup> Resolution R2014-77 approved the intergovernmental agreement (IGA), pursuant to the Intergovernmental Cooperation Act (5 ILCS 220/1 *et seq.* (West 2016)), between the Designating Units of Government.<sup>9</sup> It provides that the Advisory Board shall be comprised of the Executive Committee of the Board of Directors of the EDC, with the Executive Director of the EDC serving as Enterprise Zone Administrator.<sup>10</sup> The EDC's Executive Committee is elected annually at the EDC Annual Meeting.<sup>11</sup> Additionally, Resolution R2014-78 formalized the EDC's role of

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<sup>3</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Supervising Attorney, Public Access Bureau (November 4, 2016), at 1.

<sup>4</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Supervising Attorney, Public Access Bureau (November 4, 2016), at 1.

<sup>5</sup>County of DeKalb, *Establishing the DeKalb County Enterprise Zone*, Resolution R2014-76 (Nov. 19, 2014), at 1.

<sup>6</sup>*See* 20 ILCS 655/5.1 (West 2016).

<sup>7</sup>*See* 20 ILCS 655/5.2.1 (West 2016).

<sup>8</sup>20 ILCS 655/8 (West 2016).

<sup>9</sup>County of DeKalb, *Adopting the DeKalb County Enterprise Zone Intergovernmental Agreement*, Resolution R2014-77 (Nov. 19, 2014).

<sup>10</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 29.

<sup>11</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 30.

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administering the Enterprise Zone.<sup>12</sup> The formation of the Enterprise Zone permits eligible companies to apply for and obtain property tax abatement pursuant to a memorandum of understanding with the Enterprise Zone Administrator in return for meeting qualifying conditions that are intended to promote economic growth.<sup>13</sup>

Claiming that the Advisory Board "does not fall within the list expressly identified as public bodies" in section 1.02 of OMA, the EDC argued that the Advisory Board could only be subject to OMA if it "somehow qualif[ies] as a subsidiary body of the County or one of the other governmental entities."<sup>14</sup>

The test for whether an entity qualifies as a subsidiary body was set forth in *Rockford Newspapers, Inc. v. Northern Illinois Council on Alcoholism & Drug Dependence*, 64 Ill. App. 3d 94, 96-97 (1978), as summarized in *Hopf v. Topcorp, Inc.*, 256 Ill. App. 3d 887, 892 (1st Dist. 1993): "(1) whether the entity has a legal existence independent of government resolution; (2) the nature of the functions performed by the entity; and (3) the degree of government control exerted over the entity."<sup>15</sup> In *Rockford*, the Illinois Appellate Court held that a not-for-profit corporation that administered drug and alcohol treatment programs was not subject to the provisions of OMA, despite the fact that it was primarily government-funded and its activities were regulated and monitored by various levels of government. See *Rockford*, 64 Ill. App. 3d at 96 ("The amount or percentage of governmental funding of a private entity should have no bearing on whether that entity is characterized as a subsidiary for purposes of the Open Meetings Act. Although the Act itself provides that a particular entity need not be publically funded in order to be required to hold open meetings, it does not state that public funding alone will make a particular entity subject to the Act.").

Applying the first factor, independent legal existence, to itself, rather than the Advisory Board, the EDC stated that it is a registered 501(c)(3) non-profit organization. The EDC argued that its role in administering the Enterprise Zone does not diminish its status as an independent and private entity, comparing itself to the non-profit organization at issue in

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<sup>12</sup>County of DeKalb, *Appointing the DeKalb County Economic Development Corporation as the Zone Administrator for the DeKalb County Enterprise Zone*, Resolution R2014-78 (Nov. 19, 2014).

<sup>13</sup>See generally County of DeKalb, *Establishing the DeKalb County Enterprise Zone*, Resolution R2014-76 (Nov. 19, 2014), at 1.

<sup>14</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Supervising Attorney, Public Access Bureau (November 4, 2016), at 2.

<sup>15</sup>This office notes that the Illinois Supreme Court in *Better Government Ass'n v. Illinois High School Ass'n*, 2017 IL 121124, ¶26, 89 N.E.3d 376, 384 (2017), which was decided after the parties' submissions in this matter, recognized an additional factor: "the extent to which the entity is publicly funded[.]"

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*Rockford* and the Illinois High School Association (IHSA) in *Better Government Ass'n v. Illinois High School Ass'n*, 2016 IL App (1st) 151356, 56 N.E.3d 497 (2016), *aff'd*, 2017 IL 121124, 89 N.E.3d 376 (2017). The EDC stated that membership of the Advisory Board is entirely within its control, rather than the control of any governmental unit, and that members of the Advisory Board serve without compensation. In addition, the EDC stated that the Zone Administrator (who is also the EDC Director) is paid solely by the EDC, and that the Advisory Board is entirely funded through administrative fees paid by businesses in the Enterprise Zone.

Under the second factor, the nature of the functions performed by the entity, the EDC acknowledged that the Advisory Board provides certain functions and services for the Designating Units of Government, but argued that "those functions are not governmental in nature[ ]" because they are "the type of contractual services that are routinely provided by private consultants[.]"<sup>16</sup> Citing *Better Government Ass'n*, the EDC argued that the fact that a public body could perform the same functions as the Advisory Board does not transform its functions into governmental functions. See *Better Government Ass'n*, 2016 IL App (1st) 151356, ¶¶25-28, 56 N.E.3d at 505 (concluding that "although a public body could perform the same functions of IHSA in developing, supervising, and promoting interscholastic competitions among its member schools, the private, independent, not-for-profit IHSA does not perform public, governmental functions in this case."). The EDC also asserted that although the Advisory Board's duties are advisory in nature, the Advisory Board does not advise a public body.

Under the third factor, degree of control by a governmental entity, the EDC emphasized that the voting membership of the Advisory Board is comprised of the EDC's Executive Committee and Executive Director. According to the EDC, "[t]here is no day-to-day supervision over the [Advisory Board] by the county or any other governmental entity."<sup>17</sup>

In reply, WSPY first argued that it is important to distinguish the EDC from the Advisory Board. WSPY acknowledged that EDC is a private entity, but asserted that the Advisory Board is a separate entity, stating that the entities have separate meetings with separate agendas, meeting structures, and attendance.

With respect to whether the Advisory Board has an independent legal existence, WSPY argued that it does not, disputing the EDC's claim that membership on the Advisory Board is entirely under the EDC's control. WSPY asserted that under the IGA, the constituent bodies that do not have representation on the Advisory Board may appoint non-voting members.

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<sup>16</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Supervising Attorney, Public Access Bureau (November 4, 2016), at 3.

<sup>17</sup>Letter from Julie A. Tappendorf, Ancel Glink, to Joshua Jones, Supervising Attorney, Public Access Bureau (November 4, 2016), at 5.

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The pertinent provision of the IGA states: "Representatives of the Designating Units of Government and Representatives of Taxing Bodies participating in the DeKalb County Enterprise Zone Property Tax Abatement Program who do not currently serve on the EDC Executive Committee will be ex-officio, non-voting member[s] of the Advisory Board."<sup>18</sup> Thus, it appears not that the constituent bodies independently appoint non-voting members to the Advisory Board, but that representatives of the constituent bodies automatically qualify as non-voting Advisory Board members.

WSPY further argued, however, that the Advisory Board "does not have an independent legal existence apart from the constituent governments that created" it,<sup>19</sup> stating that important decisions must be approved by six of the seven Designating Units of Government. For instance, the IGA provides that in the event that the County or EDC elects to terminate it:

[T]he parties shall cooperate in good faith to approve a new Zone Administrator and Administration Board that is acceptable to at least six out of seven of the Parties, to approve a new Administration Agreement that is acceptable to at least six out of seven of the Parties, and to approve an amendment to this Agreement consistent with the Parties' agreement. The membership composition of the Advisory Board and the mechanism for selection of members of the Advisory Board shall not change without the approval of at least six out of seven of the Parties to this Agreement.<sup>[20]</sup>

In contrast, WSPY argued, a legally independent entity would be able to alter its own operations without consulting public bodies for approval. WSPY asserted that, given the Advisory Board's sole purpose of administering the Enterprise Zone, "[t]his lack of control over its own destiny illustrates that it has no separate legal existence" from the IGA and the parties to it.<sup>21</sup>

As to the nature and function of the Advisory Board, WSPY asserted that the Advisory Board makes final decisions on whether applications for tax abatement are accepted or rejected. WSPY stated that before the Enterprise Zone was created, tax incentive deals in

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<sup>18</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 29.

<sup>19</sup>Letter from Doug Nelson, President, Wspy News, to Josh Jones, Attorney General, Supervising Attorney (undated), at \*2.

<sup>20</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 29-30.

<sup>21</sup>Letter from Doug Nelson, President, Wspy News, to Josh Jones, Attorney General, Supervising Attorney (undated), at \*3.

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DeKalb County were discussed and voted upon in open meetings held in accordance with OMA; by not adhering to OMA, the Advisory Board "has dramatically reduced public inspection, comment, and understanding of tax incentive deals" in the County.<sup>22</sup>

Lastly, regarding the degree of governmental control over the Advisory Board, WSPY argued that the terms of the IGA are comprehensive. WSPY noted that section IV of the IGA<sup>23</sup> sets out the Advisory Board's duties, membership composition and terms, voting requirements, and mechanics of dissolution.

Although the parties in this matter focused on the factors used to assess whether an entity is a subsidiary body, this office notes that advisory bodies are also identified in section 1.02 of OMA as public bodies subject to the Act. In *University Professionals of Illinois, Local 4100 of the Illinois Federation of Teachers v. Stukel*, 344 Ill. App. 3d 856 (1st Dist. 2003), the plaintiff alleged that a group of presidents and chancellors of public universities (Council), which made recommendations to the Illinois Board of Higher Education (IBHE), violated OMA by meeting privately before IBHE meetings to discuss issues related to funding for public education because it constituted an advisory body. *Stukel*, 344 Ill. App. 3d at 858. In holding that the Council was not an advisory body for purposes of OMA, the court considered the following factors to be relevant to that assessment:

[1] who appoints the members of the entity, the formality of their appointment, and whether they are paid for their tenure; [2] the entity's assigned duties, including duties reflected in the entity's bylaws or authorizing statute; [3] whether its role is solely advisory or whether it also has a deliberative or investigative function; [4] whether the entity is subject to government control or otherwise accountable to any public body; [5] whether the group has a budget; [6] its place within the larger organization or institution of which it is a part; and [7] the impact of decisions or recommendations that the group makes. *Stukel*, 344 Ill. App. 3d at 858.

These factors have significant overlap with the *Rockford* factors, as both sets examine the independence of the entities and the role that they play in the transaction of public business.

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<sup>22</sup>Letter from Doug Nelson, President, Wspy News, to Josh Jones, Attorney General, Supervising Attorney (undated), at \*3.

<sup>23</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 28-30.

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Various decisions have been issued by Illinois courts concerning whether entities qualified as subsidiary or advisory bodies for purposes of OMA, but none address whether an entity may be a public body pursuant to an intergovernmental agreement. The Office of the Attorney General, however, has issued opinions concerning the nature of entities formed by intergovernmental agreements. In Ill. Att'y Gen. Op. No. 99-021, issued November 4, 1999, Attorney General Ryan addressed whether DuPage Public Safety Communications (Du-Comm), an entity created pursuant to an intergovernmental agreement to provide centralized public safety dispatching services, was an "agency" required to maintain its records in accordance with the Local Records Act (50 ILCS 205/1 *et seq.* (West 1998)). Seven municipalities originally entered into the intergovernmental agreement upon passing authorizing ordinances. Ill. Att'y Gen. Op. No. 99-021, at 2. Du-Comm was led by an unpaid board of directors and unpaid executive committee. Ill. Att'y Gen. Op. No. 99-021, at 2. The board of directors, consisting of mayors or presidents of the participating municipalities and representatives of the participating fire protection districts, was authorized to approve and adopt Du-Comm's annual budget; contract on behalf of Du-Comm; incur debts, liabilities, or obligations to accomplish its purposes; and employ personnel. Ill. Att'y Gen. Op. No. 99-021, at 2-3. The executive committee, consisting of the officers of the board of directors and two municipal administrators, two fire chiefs, and two police chiefs, was responsible for Du-Comm's day-to-day operations. Ill. Att'y Gen. Op. No. 99-021, at 3. Each of the parties to the intergovernmental agreement contributed to Du-Comm's budget, owned a common interest in its property, and was liable for its debts. Ill. Att'y Gen. Op. No. 99-021, at 3.

Attorney General Ryan noted that the purpose of the Local Records Act was to facilitate governmental operations by prohibiting "any officer or agency" from disposing of local public records without approval from the applicable Local Records Commission. Ill. Att'y Gen. Op. No. 99-021, at 3-4 (quoting 50 ILCS 205/7 (West 1998)). Much like the definition of "public body" in OMA, the definition of "agency" in the Local Records Act included "all parts, boards, departments, bureaus and commissions of any county, municipal corporation or political subdivision." Ill. Att'y Gen. Op. No. 99-021, at 4 (quoting 50 ILCS 205/3 (West 1998)). Attorney General Ryan stated that the municipalities and fire protection districts that participated in Du-Comm were municipal corporations and thus agencies subject to the Local Records Act. Ill. Att'y Gen. Op. No. 99-021, at 5. Given that "Du-Comm was not created as a separate legal entity," and no statutory authority existed for the creation of such a separate governmental entity,<sup>24</sup> Attorney General Ryan concluded that "Du-Comm is a joint operation of its member municipal corporations[,]" and therefore "a part of each of the municipal corporations that created it." Ill. Att'y Gen. Op. No. 99-021, at 6. Attorney General Ryan accordingly opined that

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<sup>24</sup>This office notes that the Illinois Enterprise Zone Act does not provide for an enterprise zone to be a separate legal entity.



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Du-Comm was an "agency" subject to the requirements of the Local Records Act. Ill. Att'y Gen. Op. No. 99-021, at 7.

Although Attorney General Ryan's analysis of agencies created pursuant to intergovernmental agreements in Ill. Att'y Gen. Op. No. 99-021 concerned a different statute, it is instructive in this matter given the similarities between the definitions of "agency" and "public body" and the factors that were considered in determining whether an entity created pursuant to an intergovernmental agreement is an "agency" under the Local Records Act and the *Stukel* and *Rockford* factors that are relevant to our determination of whether the Advisory Board is subject to OMA.

Under the terms of the IGA, the voting members of the Advisory Board are appointed by the EDC, a private entity, though representatives of the constituent bodies serve as non-voting members. Advisory Board members do not receive compensation, as was the case with Du-Comm's board of directors and the Council in *Stukel*. See *Stukel*, 344 Ill. App. 3d at 866. Yet, while the Council in *Stukel* was self-initiated (*Stukel*, 344 Ill. App. 3d at 866), the Advisory Board and Du-Comm's board of directors were created under intergovernmental agreements. *Better Government Ass'n* is also factually distinguishable. In holding that the IHSA was not a public body, the court emphasized that the IHSA "was not created by a school district or any other public body or by any other statute or government resolution. \* \* \* Its authority is derived from its board of directors, which is created pursuant to its own constitution." (*Better Government Ass'n*, 2017 IL 121124, ¶37, 89 N.E.3d at 386). Similar to Du-Comm's board of directors, on the other hand, the Advisory Board is empowered to act only pursuant to the IGA and Administration Agreement, which manifest the collective will of the Designating Units of Government – not the EDC.

The duties of the Advisory Board, as set out in the Enterprise Zone's Administration Agreement,<sup>25</sup> include implementing and monitoring goals and objectives; establishing operations and management procedures, including appeals processes, and advising on policies; reporting to the Designating Units of Government and other participating bodies on an annual basis as to Zone activities, performance, policies, and procedures; marketing the Enterprise Zone; and reporting data to the Illinois Department of Commerce and Economic Opportunity and Illinois Department of Revenue. These significant, formal responsibilities accord with those of Du-Comm's board of directors but contrast sharply with those of the Council in *Stukel*, which had no duties assigned by IBHE. See *Stukel*, 344 Ill. App. 3d at 866. Further, while the Council in *Stukel* had no deliberative or investigative function (*Stukel*, 344 Ill. App. 3d at 866), the Advisory Board has a substantial deliberative function in deciding which

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<sup>25</sup>DeKalb County Enterprise Zone, Administration Agreement (Nov. 19, 2014), at 2.

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companies receive property tax abatements and under what conditions. Thus, the Advisory Board's duties strongly indicate that it is a public body.

Although the EDC argued that the Advisory Board is not supervised by any public body on a day to day basis, the Advisory Board is accountable to the Designating Units of Government under the IGA and Administration Agreement. Unlike the Council in *Stukel*, which was not subject to governmental control or otherwise accountable to any public body (*Stukel*, 344 Ill. App. 3d at 866), and the IHSA, where "no public body has control over how the governing board is established or comprised[.]" "[m]embership by individual schools is not compulsory[.]" and "[t]he board is not accountable to any particular school district or particular public school[ ]" (*Better Government Ass'n*, 2017 IL 121124, ¶¶40, 41, 89 N.E.3d at 386-87), the membership and duties of the Advisory Board are governed by the IGA and Administration Agreement. As with Du-Comm and its board of directors, the Advisory Board has no legal existence independent of government resolution; it lacks discretion to act outside of the duties established by the Designating Units of Government under the Illinois Enterprise Zone Act. *See* Ill. Att'y Gen. Op. No. 05-010, issued December 16, 2005, at 29 (an entity created pursuant to an intergovernmental agreement derives its powers from its constituent bodies and possesses no inherent powers). Moreover, as WSPY noted, significant changes to the Advisory Board require the agreement of six out of the seven of those public bodies. The degree of governmental control to which the Advisory Board is subject indicates that it is a public body.

The Advisory Board does not appear to have a budget of its own. Rather, the EDC provides the operating expenses for the Enterprise Zone, including expenses involved in the Advisory Board's meetings and its reporting functions.<sup>26</sup> Similar to the IHSA, which "does not receive any direct governmental funding" but which earns revenue pursuant to its relationships with public bodies (*Better Government Ass'n*, 2017 IL 121124, ¶¶49-53, 89 N.E.3d at 388-89), the Advisory Board's activities are funded by fees charged to companies seeking property tax abatement. In contrast, Du-Comm's budget was funded by its constituent bodies, though Attorney General Ryan did not address whether its board of directors had a separate budget. The absence of direct public funding for the Advisory Board is not dispositive of the applicability of OMA. *See Rockford*, 64 Ill. App. 3d at 96.

The positioning of the Advisory Board, however, is comparable to Du-Comm's board of directors and is unlike the circumstances discussed in *Stukel*. The Advisory Board is essential to the operation of the Enterprise Zone, but it is not housed within one public body and instead serves the interests of the public bodies that joined together under the IGA and Administration Agreement. In *Stukel*, the court stated that "each member [of the Council] is part of a larger organization or institution, specifically, the university he or she heads, [but] no

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<sup>26</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 32.

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member of the Council is a member of the IBHE." *Stukel*, 344 Ill. App. 3d at 866. In this case, the Advisory Board manages Enterprise Zone business for the public bodies that comprise it, just as Du-Comm's board of directors manages the agency for the public bodies that comprise it. Under section 5 of the Intergovernmental Cooperation Act (5 ILCS 220/5 (West 2016)):

Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity or undertaking or to combine, transfer, or exercise any powers, functions, privileges, or authority which any of the public agencies entering into the contract is authorized by law to perform, provided that such contract shall be approved by the governing bodies of each party to the contract and except where specifically and expressly prohibited by law.

The Advisory Board administers the joint operation of the Enterprise Zone, playing a central role in exercising the combined authority of the constituent bodies with respect to economic development.

Lastly, as with Du-Comm's board of directors, the impact of the Advisory Board's decisions is considerable. In *Stukel*, no allegation was made as to the impact of the Council's decisions on IBHE (*Stukel*, 344 Ill. App. 3d at 866). In contrast, the Advisory Board's consent is needed to: (1) terminate an abatement and/or require repayment of previously abated property taxes due to a failure to maintain sufficient employment levels;<sup>27</sup> (2) waive elements of a memorandum of understanding with an applicant due to a hardship;<sup>28</sup> (3) collect a processing fee for Enterprise Zone activities;<sup>29</sup> and (4) transfer an abatement from one taxpayer to another.<sup>30</sup> In particular, the authority to permit certain companies to avoid meeting performance measures while still retaining property tax abatement is significant. The ability to decide whether a company retains property tax abatement strongly militates in favor of construing the Advisory Board as a public body.

Having reviewed all of the relevant factors, on balance, this office concludes that the Advisory Board is a public body that is subject to the requirements of OMA. Under both the *Rockford* and *Stukel* tests, the Advisory Board's role in deciding property tax abatement issues

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<sup>27</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 27.

<sup>28</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 28.

<sup>29</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 2.

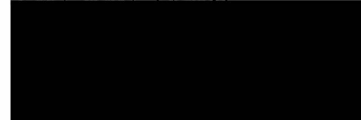
<sup>30</sup>DeKalb County Enterprise Zone, Intergovernmental Agreement (Nov. 19, 2014), at 32.

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for the constituent bodies under the IGA is too substantial for the Advisory Board to deliberate about public business behind closed doors. Although the Advisory Board was formed by an intergovernmental agreement rather than by a single public body, its governmental role is no less significant. *See* Ill. Att'y Gen. Op. No. 99-021, at 6-7 ("The fact that an association of units of local government is given a degree of independence in exercising its granted powers does not mean that it is not a part of its originating members."); *see also* Ill. Att'y Gen. Op. No. 05-010, at 29 (an entity created pursuant to an intergovernmental agreement "must comply with whatever requirements and limitations govern" the participating units of local government). Accordingly, for the reasons set out above, this office requests that the Advisory Board conduct all future meetings in accordance with the provisions of the Act. Among other things, the Advisory Board should provide advance notice of its meetings (5 ILCS 120/2.02 (West 2016)), keep written minutes (5 ILCS 120/2.06(a) (West 2016)), and provide members of the public with an opportunity to address Advisory Board members (5 ILCS 120/2.06(g) (West 2016)). This office also requests that each Advisory Board member complete the OMA electronic training curriculum developed and administered by the Public Access Counselor. *See* 5 ILCS 120/1.05 (West 2016).

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-8413 or the Chicago address listed on the first page of this letter. This letter serves to close this file.

Very truly yours,



JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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