

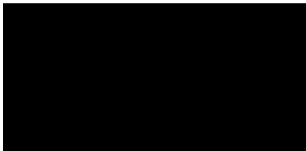


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 14, 2020

Via electronic mail



Via electronic mail

Ms. Christine G. Christensen
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter
P.O. Box 80
Monticello, Illinois 61865
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RE: OMA Request for Review – 2020-PAC 62002

Dear [REDACTED] and Ms. Christensen:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons explained below, the Public Access Bureau concludes that the February 25, 2020, meeting of the Decatur Public School District No. 61 Board of Education (Board) did not violate the requirements of OMA.

In her March 2, 2020, Request for Review, [REDACTED] alleged that the Board violated the requirements of OMA because the meeting location was not open or convenient to the public. In particular, [REDACTED] alleged that the meeting room was at capacity and members of the public had to stand in the hallway or view the proceedings in a conference room on another floor. On March 9, 2020, this office sent a copy of the Request for Review to the Board and requested that it provide a written response to [REDACTED] allegations and to provide copies of the February 25, 2020, meeting agenda and minutes, as well as any recordings of the open session of the meeting. On March 18, 2020, counsel for the Board provided a written answer. On April 1, 2020, this office forwarded the Board's written response to [REDACTED]; she did not reply.

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DETERMINATION

Section 1 of OMA (5 ILCS 120/1 *et seq.* (West 2018)) provides that "it is the intent of this Act to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 of OMA further provides that members of the public have "the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." This office construed Mr. Johnson's Request for Review as alleging a violation of section 2.01 of OMA (5 ILCS 120/2.01 (West 2018)), which provides that "[a]ll meetings required by this Act to be public shall be held at specified times and places which are convenient and open to the public." This provision "requires a venue that is not only 'open,' but 'convenient,' to the public." *Gerwin v. Livingston County Board*, 345 Ill. App. 3d 352, 359 (4th Dist. 2003).

In addressing the meaning of "convenient" for purposes of section 2.01 of OMA, the *Gerwin* court stated that "[a] meeting can be open in the sense that no one is prohibited from attending it, but it can be held in such an ill-suited, unaccommodating, unadvantageous place that members of the public, as a practical matter, would be deterred from attending it." *Gerwin*, 345 Ill. App. 3d at 361. Still, the court found that "[i]t would be unreasonable to suppose the legislature intended * * * that public bodies hold their meetings 'at such locations as are sufficient to accommodate *all* interested members of the public, such that they may see and hear all proceedings in reasonable comfort and safety.'" (Emphasis in original.) *Gerwin*, 345 Ill. App. 3d at 361. Accordingly, the court construed section 2.01 as requiring "not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin*, 345 Ill. App. 3d at 362, quoting *State ex rel. Badke v. Village Board of the Village of Greendale*, 173 Wis. 2d 553, 579, 494 N.W.2d 408, 418 (Wis. 1993).

The Board explained that it held its February 25, 2020, meeting at its usual location, the board room on the first floor of the Keil Administration Building. The Board stated that it ordinarily supplied seating for 82 members of the public in the board room, and that average attendance at its meetings is approximately 70 people. The Board acknowledged that attendance on occasions had been higher in the months prior to the meeting in question. The Board stated that the Board and its staff had been contacted by members of the public about increased attendance at its meetings, and anticipated a larger than normal turnout for the February 25, 2020, meeting. Accordingly, the Board stated it had prepared additional seating for 75 people to view a live stream of the meeting in a conference room on the third floor and had reserved accessible seating in the board room for individuals with disabilities. The Board stated that between 75 and 80 people attended the meeting in the board room along with approximately 20 people in the third floor conference room. The Board acknowledged that a few individuals choose to stand in the hallway outside of the board room, but asserted that most of those were District administrators who stood so that others could sit in the board room.

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██████████ asserted that she had contacted the District on February 19, 2020, about moving the location of the February 25, 2020, meeting to a larger space because more people might have attended the meeting than could have been accommodated in the board room. She also alleged that another person had contacted the District about ensuring adequate seating at the meeting for people with disabilities. ██████████ stated that the Board had declined the request for a change of meeting location. ██████████ asserted that the February 25, 2020, meeting was inconvenient because individuals attending the meeting in the conference room had to be summoned from the third floor to participate in public comment. ██████████ further asserted that the meeting was inconvenient because individuals standing in the hallway were not provided seating. Lastly, ██████████ alleged that the Board had alternative locations to hold the meeting that would have accommodated more people. She speculated that the Board may have chosen to hold the meeting in the board room to discourage increased participation by members of the Decatur Federation of Teaching Assistants whose contract was being negotiated at that time.

The Board's response asserted that every person who wished to sit was provided a seat in either the board room or the conference room on the third floor. The Board stated that every attendee who wished to speak at the meeting was provided an opportunity, and that individuals seated in the conference room who wished to speak were escorted to the board room to address the Board. The Board further argued that the inconvenience of a person seated in the conference room going downstairs to provide public comment was minimal and did not constitute a violation of OMA.

This office has reviewed the materials submitted by the parties, including pictures of the meeting room and a video recording of the open session portion of the February 25, 2020, meeting. This office's review of the video of the meeting indicated that the board room was at capacity and some individuals walked from the conference room upstairs to the board room to address the Board. The video also shows that three individuals who addressed the Board complained about the Board's choice of location for the meeting, the lack of seating for all who wished to attend in the room where the meeting was held, and the accessibility of the meeting room for individuals in the third floor conference room who wished to speak. ██████████ and the Board agree that the Board was informed before the meeting of the potential for an unusually large turnout at the meeting. However, the court in *Gerwin* made clear that a public body is required to provide reasonable access under the circumstances. The Board took reasonable steps to provide access for the unusually large crowd by nearly doubling the amount of seating for attendees, reserving accessible seating for the disabled, and providing an overflow room for individuals to observe a live stream video of the meeting. The available information indicates that seating was provided for all attendees, but some attendees choose to stand outside the board room rather than sit in the conference room. Further, despite a slight delay in the meeting to


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allow speakers to walk from the conference room to the board room to address the Board, there is no indication that any individual who wished to observe the meeting and address the Board was unable to do so. Accordingly, we conclude that the Board did not violate OMA. This office encourages the Board to continue to monitor public attendance at its meetings and be mindful of its obligation to make its meetings reasonably accessible to the public.

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 the Springfield address on the first page of this letter, mhartman@atg.state.il.us, or (217) 782-9054. This letter serves to close this file.

Very truly yours,



MATT HARTMAN
Assistant Attorney General
Public Access Bureau

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