



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

May 21, 2015

Mr. Tom Latonis, Managing Editor
Pana News-Palladium
P.O. Box 200
205 South Locust Street
Pana, Illinois 62557

The Honorable Steven Sipes, Mayor
City of Pana
120 East Third Street
Pana, Illinois 62557

RE: Open Meetings Act Request for Review – 2013 PAC 24899

Dear Mr. Latonis and Mayor Sipes:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that there is insufficient evidence to determine that the Pana City Council (City Council) violated the requirements of OMA during its May 20, 2013, and June 5, 2013, Administration Committee meetings.

On June 12, 2013, the Public Access Bureau received Mr. Tom Latonis's Request for Review alleging that the City Council violated OMA by failing to provide notice that its May 20, 2013, and June 5, 2013, Administration Committee meetings would constitute meetings of the City Council because a majority of a quorum of City Council members would be in attendance. Specifically, Mr. Latonis alleges that the Administration Committee meetings effectively became City Council meetings when members not serving on the Administration Committee joined the meetings and discussed public business. Additionally, Mr. Latonis asserts that the City Council's use of four-person committees requires that the committee meetings also be properly noticed as City Council meetings.

This office forwarded a copy of the Request for Review to the City Council and asked it to respond to the allegations. On June 28, 2013, the City Council provided this office

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with copies of the agendas, minutes, and media notices for the May 20, 2013, and June 5, 2013, Administration Committee meetings. The City Council also confirmed that, at the time of the Request for Review, the City Council had not implemented a proposed four-member committee structure, and that each committee had then consisted of only three City Council members. The City Council's response further stated that "[t]he inclusion of comments and answers provided by the mayor and non-committee alderman do not render these meetings of the city council. The alderman and the mayor were in attendance in the audience [of the meetings at issue], yet did not sit in any position other than as private citizens and did not vote on any topic presented to the committee."¹ The City Council also asserted that "[t]he exercise by the mayor and the alderman of their constitutional right to attend and speak at the meeting as citizens cannot be infringed[]" and that "[t]he specialized knowledge, if any, of the non-committee members might actually assist the committee in garnering all relevant facts and information."²

On July 12, 2013, Mr. Latonis replied to the City Council's response stating that, regardless of the extent to which non-committee members and the Mayor participated in the committee meetings, the current committee structure constitutes a majority of a quorum of City Council members.³

In a May 12, 2015, reply to this office's request for further clarification, City Attorney Steven Mahrt responded on behalf of Mayor Sipes and confirmed that the participation of non-committee City Council members at the aforementioned meetings occurred during and exclusively as part of the public comment sections of the meetings in question.⁴

DETERMINATION

Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2012)) defines a public body as "all 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[.]" Committees of the City Council, including the Administration

¹Letter from William E. Farr, to Office of the Attorney General, Public Access Bureau, ATTN: Christopher R. Boggs, Assistant Attorney General (June 28, 2013).

²Letter from William E. Farr, to Office of the Attorney General, Public Access Bureau, ATTN: Christopher R. Boggs, Assistant Attorney General (June 28, 2013).

³Letter from Tom Latonis, Managing Editor, *Pana News-Palladium*, to Mr. Christopher Boggs, Assistant Attorney General, Office of the Attorney General (July 12, 2013).

⁴Letter from Steven D. Mahrt to Christopher R. Boggs, Assistant Attorney General Public Access Bureau, Attorney General Office (May 12, 2015).

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Committee, are subsidiaries of that public body and, therefore, are also public bodies subject to all of the requirements of OMA. Section 1.02 of OMA (5 ILCS 120/1.02 (West 2012)) defines a meeting as:

[A]ny gathering, whether in person or by video or audio conference, telephone call, electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication, of a *majority of a quorum* of the members of a public body held for the purpose of discussing public business or, for a 5-member public body, a quorum of the members of a public body held for the purpose of discussing public business. (Emphasis added.)

In opinion No. S-726, issued March 22, 1974 (1974 Ill. Att'y Gen. Op. No. S-726, at 126), Attorney General Scott advised that "whether a gathering falls within the definition of a meeting as used in the Act, would depend upon the peculiar facts in each situation." The Public Access Bureau has previously determined that a majority of a quorum of a public body may attend the public meeting of another public body without subjecting the former to the requirements of OMA, if its members do not engage in deliberative discussions among themselves of public business of their public body. Ill. Att'y Gen. PAC Req. Rev. Ltr. 12407, issued April 14, 2011. In addition, the Public Access Bureau has determined that the mere presence of a quorum of members of a public body on a committee of that public body does not convert the committee meeting into a meeting of the whole public body provided that discussion is confined to the public business of the committee. Ill. Att'y Gen. PAC Req. Rev. Ltr. 32213, issued December 8, 2014.

The City Council is comprised of nine members; a majority of the members, or five members, of the City Council comprise a quorum, and three members comprise a majority of a quorum. Therefore, when at least three City Council members engage in contemporaneous, interactive communications concerning City Council business, those discussions may constitute City Council meetings subject to the procedural safeguards and requirements of OMA.

Our review of the May 20, 2013, and June 5, 2013, Administration Committee meeting minutes indicates that discussion by Committee members was limited to the City budget, City property, City Council committee structure, and other relevant topics under the purview of the Administration Committee.⁵ The Administration Committee took no final action other than to recommend items to the City Council for final action. If the Administration Committee's discussion had extended into general public business unrelated to the business of

⁵Administration Committee Meeting, May 20, 2013, Minutes; Administration Committee Meeting, June 5, 2013, Minutes.

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the Administration Committee, then the meeting could have constituted a City Council meeting. That does not appear to be the case, however. Further, although the minutes of the Committee meetings do not reflect the precise extent to which non-committee members engaged in the discussion of Committee business, the City Council's response asserts that those members participated exclusively as private citizens and only during the period set aside for public comment.⁶

Based on the available information, there are insufficient facts to conclude that the City Council members who do not serve on Administration Committee participated in the Committee's deliberative discussions. Accordingly, this office is unable to determine that the City Council violated the requirements of OMA by failing to provide notice of the May 20, 2013, and June 5, 2013, Administration Committee meetings as City Council meetings.

However, this office strongly cautions the City Council that participation by non-committee members of the City Council, even when confined to the public comment portions of Committee meetings, does have the potential to lead to exchanges between Committee members and non-Committee members that could constitute deliberative discussions of public business in violation of OMA. Moreover, because the business of the Committee cannot be separated from that of the City Council, it is questionable whether non-committee members who address the Committee could do so exclusively in their capacity as private citizens. Therefore, we would recommend that the City Council reconsider this practice.

The Public Access Counselor has determined that resolution of this issue does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at the Springfield address listed on the first page of this letter.

Very truly yours,


CHRISTOPHER R. BOGGS
Assistant Attorney General
Public Access Bureau

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cc: Mr. Steven D. Mahrt
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⁶Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."