

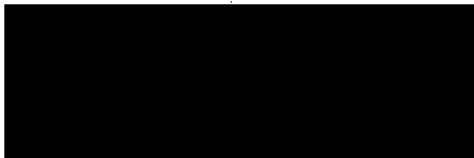


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

March 27, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 62246

Dear [REDACTED]:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted as to this matter.

In your Request for Review, received March 19, 2020, you asserted that on March 18, 2020, the Chicago Executive Airport Board of Directors (Board) held a scheduled meeting at which there was not a quorum of members physically present. You asserted that only the chairman was present at the meeting location and that the six directors participated via teleconference. This office construes your Request for Review as alleging violations of sections 2.01 of OMA (5 ILCS 120/2.01 (West 2018)) and 7(a) of OMA (5 ILCS 120/7(a) (West 2018)).

The first sentence of the second paragraph of section 2.01 of OMA provides that "[a] quorum of members of a public body must be physically present at the location of an open meeting." This office has previously concluded that the requirement that a quorum be physically present is tied to circumstances in which one or more members participate in the meeting despite not being physically present at the meeting location. *See Ill. Att'y Gen. PAC Req. Rev. Ltr. 49326*, issued December 18, 2017, at 4 (concluding that public body did not violate OMA, although it may not have complied with other policies, rules, bylaws, ordinances or laws concerning quorums, when a majority of a quorum of public body members were present at the meeting location but no members attended remotely). Section 7(a) of OMA provides that "[i]f a quorum of the members of the public body is physically present as required by Section 2.01, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of" certain enumerated

March 27, 2020

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reasons. Thus, under normal circumstances all six directors would not have been permitted to attend remotely. The March 18, 2020, Board meeting, however, took place under special circumstances and orders necessitated by the COVID-19 pandemic.

### **Disaster Proclamation and Executive Order**

On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>1</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>2</sup> The Governor then issued a series of executive orders for coping with the disaster. On March 16, 2020, to protect the public's health, the Governor of Illinois issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>3]</sup>


Executive Order 2020-07, which was in effect at the time of the March 18, 2020, Board meeting, permitted the Board to have less than a quorum of members physically present at its March 18, 2020, meeting and allowed its members to participate remotely without the limitations described in section 7 of OMA. Accordingly, this office concludes that no further inquiry is warranted as to this matter.

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<sup>1</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.


<sup>3</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

  
March 27, 2020

Page 3

This file is closed. If you have any questions, you may contact me at the Springfield address on the first page of this letter, LHarter@atg.state.il.us, or at (217) 524-7958.

Very truly yours,

  
LAURA S. HARTER  
Deputy Bureau Chief  
Public Access Bureau

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cc: Mr. D. Court Harris  
Chairman  
Board of Directors  
Chicago Executive Airport Authority  
1020 South Plant Road  
Wheeling, Illinois 60090

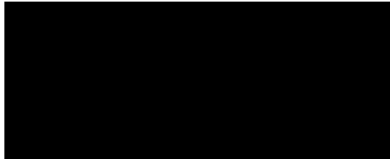


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

March 27, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 62255

Dear [REDACTED]:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons that follow, the Public Access Bureau has determined that no further action is warranted in this matter.

On March 20, 2020, you submitted an e-mail to the Public Access Bureau complaining that the McHenry County Board of Health (Board) was requiring public comments to be submitted in writing two hours prior to the start of its March 23, 2020, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides, in pertinent part, that "[a] person who believes that a **violation of this Act by a public body has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days **after the alleged violation.**" (Emphasis added.) Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office has previously determined that in order to warrant further action by this office, a Request for Review concerning public comment must set forth facts indicating that a member of the public attempted to address public officials during an open meeting but was improperly restricted by the public body from doing so. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017*, issued June 1, 2016, at 1-2 (determining that a Request for Review alleging that a board's public comment rules violated section 2.06(g) of OMA did not warrant further inquiry because the Request for Review did not allege that anyone who attempted to address the board during an open meeting was improperly denied an opportunity to speak).

March 27, 2020

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As of the date you submitted his Request for Review, the March 23, 2020, meeting had not yet occurred. Because you submitted your Request for Review before the Board meeting took place, no further action in this matter is warranted at this time.

This file is closed. Please contact me at (312) 814-5201, [esteinberg@atg.state.il.us](mailto:esteinberg@atg.state.il.us), or the Chicago address listed on the first page of this letter if you have questions.

Very truly yours,

EDIE STEINBERG  
Senior Assistant Attorney General  
Public Access Bureau

62255 o no fi war co

*Via electronic mail*

Dr. William Stinson, M.D.

President

McHenry County Board of Health

2200 North Seminary Avenue

Woodstock IL 60098

[BoardofHealth@McHenryCountyIL.gov](mailto:BoardofHealth@McHenryCountyIL.gov)



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 6, 2020

*Via electronic mail*  
Mr. Cal Skinner  
McHenry County Blog  
275 Meridian Street  
Crystal Lake, Illinois 60014  
Calskinner2@gmail.com

RE: OMA Request for Review – 2020 PAC 62329

Dear Mr. Skinner:

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons discussed below, the Public Access Bureau has determined that no further action is warranted in this matter.

On March 27, 2020, this office received your Request for Review alleging that the McHenry County Board of Health (Board) violated OMA at its March 23, 2020, meeting. You stated: "I complain because, according to its agenda, which is attached, the public had no opportunity to comment at the meeting."<sup>1</sup> The agenda you provided stated that the Board would hold a "Virtual Meeting" and provided an internet link that the public could use to listen to the meeting. The agenda also stated that public comments were to be submitted in writing two hours before the meeting commenced and provided an e-mail address for the submission of comments. You have not alleged that you or any other member of the public attempted to submit written comments but were unable to do so, or that written comments did not reach the Board members.

Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office construes your Request for Review as alleging that the Board violated section 2.06(g) by restricting public comments to e-mail submissions and not providing members of the public with an opportunity to verbally address Board members.

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<sup>1</sup>E-mail from Cal Skinner, McHenry County Blog, to Public Access [Bureau, Office of the Attorney General (March 27, 2020).

On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> The Governor then issued a series of executive orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>[4]</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>5</sup>

As discussed above, section 2.06(g) of OMA provides members of the public with a statutory right to address a public body pursuant to its established and recorded rules. No provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude public bodies from physically convening meetings. It would be illogical to construe OMA as prohibiting a public body from meeting remotely during public health emergencies because the limitations of meeting in such a format may necessitate a temporary change in- the public body's method of allowing public comment. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that

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<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

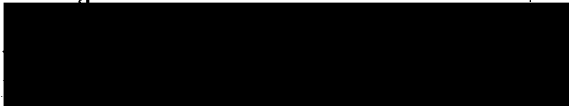
<sup>5</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

Mr. Cal Skinner  
April 6, 2020  
Page 3

would defeat its purpose "or yield an absurd or unjust result."). Although it is unclear whether the Board used technology for the March 23, 2020, meeting that would have enabled it to permit verbal comments from members of the public who listened to the meeting on the internet, this office is unable to conclude that the Board unreasonably restricted public comment under the exigent circumstances that existed at that time. Allowing public comment to be submitted via e-mail allowed members of the public to address the substance of their comments to the Board. Section 2.06(g) does not require public bodies to answer questions or otherwise interact with the public. This provision merely provides the public with a statutory right to address the Board, which it was permitted to do via e-mail at its March 23, 2020, meeting. Taking into account all of these factors and the highly specific circumstances surrounding the meeting, this office has determined that no further action is warranted in this matter.

This file is closed. If you have questions, you may contact me at (312) 814-6756.  
or [ssilverman@atg.state.il.us](mailto:ssilverman@atg.state.il.us).

Very truly yours,



STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

62329 o no fi war county

cc: Dr. William Stinson  
President  
McHenry County Board of Health  
McHenry County Health Department  
667 Ware Road  
Woodstock, Illinois 60098





OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 11, 2020

*Via electronic mail*

RE: OMA Requests for Review – 2020 PAC 62442; 2020 PAC 62743

Dear [REDACTED]

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)).

On April 6, 2020, you submitted a Request for Review (2020 PAC 62442) alleging that the City Council (Council) of the City of Elmhurst (City) violated OMA during its April 6, 2020, meeting. Specifically, you allege that the Council violated OMA by (1) setting a deadline 72 hours prior to the meeting by which to submit written public comments; (2) providing an online comment form allowing only 255 characters; and (3) failing to read aloud during the meeting public comments that were submitted in writing. On April 15, 2020, you supplemented your Request for Review, informing this office that the Council did not, in fact, require public comments to be made 72 hours in advance, and that the Council expanded its online comment form to accept more than 255 characters. You also alleged that that because two people used the online comment form prior to the time it was expanded, their right to provide public comment may have been curtailed.

On April 27, 2020, you submitted another Request for Review (2020 PAC 62743) alleging that the Council violated OMA during its April 6, 2020, and April 20, 2020, meetings because members of the public did not have an opportunity to observe portions of the meeting via video conference and electronic chat, as only four of the twelve alderman were visible through the electronic medium utilized. You also alleged that the Council violated OMA during its April 20, 2020, meeting because it did not read written comments from the public out loud during the meeting.

On May 6, 2020, you informed this office that as of May 4, 2020, the Council is allowing public comment to be given via teleconference, which satisfied your complaints about

  
The Honorable Steven M. Morley

May 11, 2020

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not reading submitted written comments out loud. Accordingly, you informed this office that your Requests for Review concern two allegations: (1) the Council may have curtailed two individuals' right to address the officials during the April 6, 2020, meeting because they each used the online comment form prior to the time it was expanded (2020 PAC 62442), and (2) the Council interfered with the ability of the public to attend its April 6, 2020, and April 20, 2020, meetings because only four of the twelve alderman were visible through the electronic medium utilized (2020 PAC 62743).

### **Disaster Proclamation and Executive Order**

On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>1</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>2</sup> The Governor then issued a series of executive orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>3</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provided that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities

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<sup>1</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>3</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

[REDACTED]  
The Honorable Steven M. Morley

May 11, 2020

Page 3

within the State except Minimum Basic Operations[.]"<sup>4</sup> This Order was twice extended, first through April 30, 2020 (Executive Order No. 2020-18, issued April 1, 2020), and then through May 31, 2020, with relatively minor modifications (Executive Order No. 2020-32, issued April 30, 2020).

In light of these provisions, public bodies such as the Council have been using various forms of technology to conduct meetings without the physical presence of all their members and with alternative arrangements for the attendance of members of the public.

### Section 2.01 and Remote Meetings

Section 2.01 of OMA (5 ILCS 120/2.01 West 2018)) requires all public meetings to be "held at specified times and places which are convenient and open to the public." The concept of public convenience implies "a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003).

Executive Order 2020-07, which was in effect at the time of the April 6, 2020, and April 20, 2020, meetings, allowed members of public bodies to participate in meetings remotely. In addition, guidance from this office provides that if public bodies are convening via electronic means, such as by conference call or by web assisted meetings, the public body should ensure that the public has a means to observe the meetings.<sup>5</sup> You have alleged that the Council violated OMA because only four members out of twelve members were visible in the video of the April 6, 2020, and April 20, 2020, meetings, which precluded the public from observing all the Council members gestures and facial expressions. You also alleged that an alderman "was unable to unmute himself during the first 9 minutes of the April 6, 2020, meeting[.]"<sup>6</sup> and that a person standing behind an alderman at the April 20, 2020, meeting was not visible to the public. In effect, you appear to assert that the Council is required to obtain technology that would enable the public to observe with precision everything that occurs at all times during its remote

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<sup>4</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020. On April 1, 2020, the Governor issued a second Disaster Proclamation (Gubernatorial Disaster Proclamation, issued April 1, 2020) and extended the applicability of several executive orders through April 30, 2020, including the Stay at Home Order (Executive Order No. 2020-18, Part 1, issued April 1, 2020). On April 30, 2020, Governor extended the applicability of several executive orders through May 29, 2020, including the executive order pertaining to the Open Meetings Act (Executive Order No. 2020-33, Part 1, issued April 30, 2020).

<sup>5</sup>See Public Access Counselor Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 3, available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).

<sup>6</sup>E-mail from [REDACTED] to [Sarah] Pratt (April 27, 2020).

meetings. That is not the standard—OMA requires "reasonable" access, and it does not contain any requirements to which public bodies must adhere when broadcasting remote meetings during public health emergencies. Under the circumstances, the Council allowed the public reasonable access to its April 6, 2020, and April 20, 2020, meetings through video conferencing in which the Council's discussions were audible and some but not all of the members were visible. Accordingly, this office has determined that no further action is warranted regarding this allegation.

### **Public Comment and Remote Meetings**

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office has previously determined that in order to warrant further action by this office, a Request for Review concerning public comment must set forth facts indicating that a member of the public attempted to address public officials during an open meeting but was improperly restricted by the public body from doing so. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2. Additionally, the COVID-19 emergency has created novel circumstances not previously encountered, and no provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude or limit public bodies from physically convening meetings.

You have alleged that the Council may have curtailed two people's right to address public officials during the April 6, 2020, meeting because they each used the online comment form prior to the time it was expanded to accept more than 255 characters. This allegation is speculative because you have not provided any information that these individuals wished to provide additional comments. Further, as you have acknowledged, the Council expanded its online comment form to accept more than 255 characters prior to the meeting, and its modification to its agenda provided multiple options for providing public comment.<sup>7</sup> You have also acknowledged that the Council is now allowing public comment to be given by teleconference during its meetings. Because the limitation you complained about is no longer in effect and the Council has taken measures that significantly enhance the public's ability to provide public comment, no further action in this matter is warranted.

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<sup>7</sup>City of Elmhurst, Regular Meeting of the Elmhurst City Council, Agenda (April 6, 2020, updated on April 6, 2020).

[REDACTED]  
The Honorable Steven M. Morley  
May 11, 2020  
Page 5

These files are closed. If you have questions, please contact me at (312) 814-5201, [esteinberg@atg.state.il.us](mailto:esteinberg@atg.state.il.us), or at the Chicago address on the first page of this letter.

Very truly yours,

[REDACTED]  
EDIE STEINBERG  
Senior Assistant Attorney General  
Public Access Bureau [REDACTED]

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62442 62743 o no fi war mun

cc: The Honorable Steven M. Morley  
Mayor  
City of Elmhurst  
209 North York Street  
Elmhurst, Illinois 60126

cc: *Via electronic mail*  
Mr. Donald J. Storino  
Storino, Ramello & Durkin  
9501 West Devon Avenue, Suite 800  
Rosemont, Illinois 60018  
[dstorino@srd-law.com](mailto:dstorino@srd-law.com)

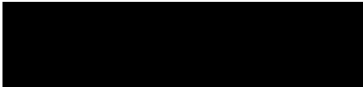


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 17, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 62543

Dear 

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons discussed below, the Public Access Bureau has determined that no further action is warranted in this matter.

On March 24, 2020, this office received your Request for Review concerning a March 20, 2020, special meeting of the Collinsville Township Board of Trustees (Board), which was held at its regular location. In particular, you alleged the Board violated OMA because members of the public were not welcomed into the meeting, and that only one member of the public at a time was permitted inside the meeting room for public comment. You provided this office with a copy of the notice and agenda for the meeting and noted that the meeting was live streamed on YouTube. You asserted that the Board violated OMA "by barring the public from physically attending this meeting, and that the [executive] order from the governor gave the Township no such exemption."<sup>1</sup>

**Disaster Proclamations and Executive Orders**

As background, this office will summarize the circumstances in effect at the time of the March 20, 2020, Board meeting. On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster proclamation became effective immediately on

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<sup>1</sup>E-mail from  to Public Access Counselor (March 24, 2020).

<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> The Governor has also issued a series of executive orders for coping with the disaster. On March 16, 2020, to protect the public's health, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>[4]</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, the Governor issued Executive Order No. 2020-10 on March 20, 2020 (Stay at Home Order). Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]"<sup>5</sup> and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>6</sup> The Stay at Home Order also prohibits "[a]ll public and private gatherings of any number of people occurring outside a single household or living unit" and "[p]ursuant to current guidance from the CDC, any gathering of more than ten people"<sup>7</sup> (emphasis in original), unless allowed by the Order. On April 1, 2020, the Governor issued a second Disaster Proclamation<sup>8</sup> and extended the applicability of several executive orders through April 30, 2020, including the Stay at Home Order.<sup>9</sup>

You have alleged that the Board has interpreted Executive Order No. 2020-007 as allowing them to bar the public from attending in person. Although the plain language of that Order suspends the in-person attendance requirement and limitations on remote attendance for

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<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

<sup>5</sup>Executive Order No. 2020-10, §1(1), issued March 20, 2020.

<sup>6</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

<sup>7</sup>Executive Order No. 2020-10, §1(3), issued March 20, 2020.

<sup>8</sup>Gubernatorial Disaster Proclamation, issued April 1, 2020.

<sup>9</sup>Executive Order No. 2020-18, Part 1, issued April 1, 2020.

April 17, 2020

Page 3

public body **members** only, it is not necessary to determine the Board's interpretation of that order. Instead, the issue for this office is whether the Board complied with OMA's requirements.

### **Convenient and Open Meetings**

Section 2.01 of OMA (5 ILCS 120/2.01 West 2018)) requires all public meetings to be "held at specified times and places which are convenient and open to the public." The concept of public convenience implies "a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003). Section 2.06(g) (5 ILCS 120/2.06(g) (West 2018)) further provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office construes your Request for Review as alleging that the Board violated those two provisions by: (1) limiting public access to the meeting to a live stream broadcast of the meeting, and (2) allowing only one person at a time inside the meeting room to address the Board.

As noted above, OMA requires public meetings to be "convenient and open" to the public and provides members of the public with the statutory right to address a public body pursuant to its established and recorded rules. No provision of OMA, however, sets out guidelines on those requirements during public health emergencies such as the present pandemic. Public gatherings, and especially public gatherings of more than ten people, can hasten the spread of COVID-19 throughout communities. In addition, members of a public body and their staffs may become exposed to or infected with COVID-19. Under these circumstances, a public body may determine that permitting members of the public to attend a meeting in person poses a significant public health risk. It would be illogical to construe OMA as prohibiting a public body from meeting remotely to protect public health and comply with social distancing and stay at home orders during public health emergencies, where it has taken reasonable efforts to make its meeting "convenient and open" to the general public. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose or "yield an absurd or unjust result.").

This office has reviewed the Board's March 20, 2020, special meeting notice and agenda. The agenda items were limited to accepting the resignation of the township supervisor and appointing a new township supervisor. The notice advised that the meeting would be open to public viewing via a live stream and directed members of the public to its website. The notice further advised that members of the public would be allowed one at a time inside the meeting room for public comment in order to practice social distancing. This office's review of the Township's YouTube channel confirmed that a recording of the complete meeting is available online. The recording reflects that some of the Board trustees participated remotely, three trustees were at the meeting location, and three members of the public addressed the Board, one at a time, in the meeting room. You have not alleged that the live stream was unavailable during



[REDACTED]  
April 17, 2020

Page 4

the meeting or that anyone who was present at the meeting was unable to address the Board. Based on these factors and the specific circumstances of the public health emergency at the time of the meeting, this office is unable to conclude that the Board failed to take reasonable measures to ensure that its March 20, 2020, meeting was "convenient and open" to the public or that it unreasonably restricted public comment. Accordingly, this office has determined that no further action is warranted in this matter.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]  
TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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cc: *Via electronic mail*  
The Honorable Cathy Allison  
Township Clerk  
Collinsville Township  
305 East Main Street  
Collinsville, Illinois 62234  
info@collinsvilletownship.org

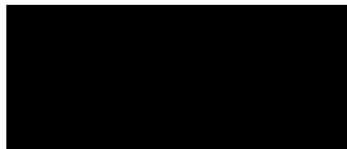


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 1, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 62592

Dear [REDACTED]

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons explained below, the Public Access Bureau has determined that no further action is warranted in this matter.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) provides:

A person who believes that a **violation of this Act** by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. \* \* \* The request for review \* \* \* must include a summary of the **facts supporting the allegation**. (Emphasis added.)

On April 13, 2020, you submitted this Request for Review alleging that the City of Joliet (City) City Council (Council) violated OMA during its special meeting earlier that evening. You listed six issues for this office's review: (1) the time for members of the public to sign up to provide public comment, from the afternoon on Thursday, April 9 through 5:30 p.m. on Sunday, April 12, 2020, occurred over a holiday weekend when many government buildings were closed; (2) not all members of the public may have had internet access by which to observe the meeting and there was no option to listen to the meeting by phone, only to comment by phone; (3) the Council did not answer questions during the meeting; (4) "[d]uring the meeting, many council members would leave, have side conversations, pass notes to each other, and appeared to text or email during callers['] comments. This also violates the social distancing rule

that is required at the time set forth by Governor Pritzker[;]"<sup>1</sup> (5) some members of the public providing comment had difficulty hearing the Council members and some members of the public experienced technical difficulties watching from their homes; and (6) the Council reconvened the April 13, 2020, meeting to April 14, 2020, and members of the public may not have been able to provide public comment at the reconvened meeting because of the short notice. You also allege that no additional speakers were permitted to sign up to speak during the reconvened meeting on April 14, 2020.

### **Disaster Proclamation and Executive Orders**

As background, this office will summarize the circumstances in effect at the time of the April 13, 2020, Council special meeting. On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> The Governor has also issued a series of executive orders for coping with the disaster. On March 16, 2020, to protect the public's health, the Governor issued Executive Order 2020-07,<sup>4</sup> which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>4</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, the Governor issued Executive Order No. 2020-10 on March 20, 2020 (Stay at Home Order). Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[;]"<sup>5</sup> and

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<sup>1</sup>E-mail from Andrew Schultz to Whom it May Concern, [Public Access Bureau], [Illinois Attorney General's Office] (April 13, 2020).

<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

<sup>5</sup>Executive Order No. 2020-10, §1(1), issued March 20, 2020.

that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>6</sup> The Stay at Home Order also prohibits "[a]ll public and private gatherings of any number of people occurring outside a single household or living unit" and "[p]ursuant to current guidance from the CDC, any gathering of more than **ten** people"<sup>7</sup> (emphasis in original), unless allowed by the Order. On April 1, 2020, the Governor issued a second Disaster Proclamation<sup>8</sup> and extended the applicability of several executive orders through April 30, 2020, including the Stay at Home Order.<sup>9</sup>

### Convenient and Open Meetings and Public Comment

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2018)) requires all public meetings to be "held at specified times and places which are convenient and open to the public." The concept of public convenience implies "a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston Co. Council*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003). Section 2.06(g) (5 ILCS 120/2.06(g) (West 2018)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

As noted above, OMA requires public meetings to be "convenient and open" to the public and provides members of the public with the statutory right to address a public body pursuant to its established and recorded rules. No provision of OMA, however, sets out guidelines on those requirements during public health emergencies such as the present pandemic. Public gatherings, and especially public gatherings of more than ten people, can hasten the spread of COVID-19 throughout communities. In addition, members of a public body and their staffs may become exposed to or infected with COVID-19. Under these circumstances, a public body may determine that permitting members of the public to attend a meeting in person poses a significant public health risk. It would be illogical to construe OMA as prohibiting a public body from meeting remotely to protect public health and comply with stay at home orders during public health emergencies, where it has taken reasonable efforts to make its meeting "convenient and open" to the general public under the circumstances. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose or "yield an absurd or unjust result.").

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<sup>6</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

<sup>7</sup>Executive Order No. 2020-10, §1(3), issued March 20, 2020.

<sup>8</sup>Gubernatorial Disaster Proclamation, issued April 1, 2020.

<sup>9</sup>Executive Order No. 2020-18, Part 1, issued April 1, 2020.

To that end, public bodies such as the Council recently have been using various forms of technology to conduct meetings without the physical presence of some or all of their members or members of the public. The Council's April 13, 2020, special meeting agenda included a public hearing considering a particular pre-annexation agreement and a resolution approving that pre-annexation agreement.<sup>10</sup> The agenda provided that the meeting would be open to public viewing via a live stream and directed members of the public to its website, where it provided a link to watch the meeting online and also noted that the meeting would be broadcast live on a local public access television station.<sup>11</sup> The notice further advised members of the public that in-person public comment was temporarily suspended and again referenced its website for the new temporary procedures for providing public comment under the current circumstances. The instructions posted on the website indicated that members of the public who wished to provide public comment could either: (1) provide their written comments via e-mail, or (2) those wishing to participate telephonically during the relevant portion of that meeting could complete a specific form on the City's website and receive a call from a City representative during the meeting.<sup>12</sup> This office's review of the City's YouTube channel confirmed that a recording of the complete meeting is available online. The recording reflects that some of the Council members participated remotely, two trustees and the mayor were at the meeting location, and that public comment was held telephonically.

You contend that the time period during which members of the public could sign up to provide public comment was inconvenient because of the Easter holiday and because many government buildings were closed, but you did not allege that the timing actually precluded any member of the public from signing up to address the Council. In fact, this office's viewing of the recording demonstrated that nearly three hundred members of the public signed up to address the Council telephonically, many of whom spoke during the April 13, 2020, special meeting. Counsel for the Council mentioned during that meeting that all those who had signed up but had not yet had the opportunity to speak would receive an e-mail with instructions for providing public comment at the reconvened meeting on April 14, 2020.

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<sup>10</sup>This office is aware that many members of the public objected to the Council's scheduling of this special meeting concerning a controversial topic during the restrictions in place because of the COVID-19 pandemic. The provisions of OMA do not address the subjects that a public body may consider at a particular time or how items are placed on an agenda; rather, OMA is concerned with advance notice and the opportunity for the public to attend and be heard at meetings. This office reaches no conclusion as to the appropriateness of proceeding with this special meeting during the restrictions on gatherings in place on April 13, 2020, and subsequent days, as that question is beyond the scope of OMA and the authority of the Public Access Counselor. *See* 15 ILCS 205/7 (West 2018).

<sup>11</sup><https://www.joliet.gov/departments/city-clerk-s-office/meeting-schedule-procedure/city-council-public-comments>.

<sup>12</sup><https://www.joliet.gov/departments/city-clerk-s-office/meeting-schedule-procedure/city-council-public-comments>.

You also argued that YouTube was the only way to watch the meeting and that not all members of the public have access to the Internet, therefore some people may not have been able to view the meeting. You have not alleged that any person was unable to access the meeting, only that lack of access was possible. However, the available information indicates that there were multiple ways that people could have viewed the meeting. The mayor stated during the special meeting that the broadcast was being livestreamed on the City's website, Facebook page, and YouTube channel, as well as being shown live on the local public access television station.<sup>13</sup> Although a limited segment of the population may not have access to the Internet, the meeting was also broadcast on television. Your Request for Review indicates there was an issue with the audio during the broadcast of the meeting on the local public access television station, but you did not allege that these issues prevented access to the meeting. Further, there is no allegation that the other streaming platforms experienced any audio problems. Moreover, OMA requires reasonable access to public meetings, rather than absolute accessibility. Therefore, the Council was required to take reasonable measures under the circumstances to ensure that the meeting was accessible; it was not required to ensure that absolutely every member of the public could view the meeting.

With respect to your complaint that the Council would not answer questions concerning the development project, section 2.06(g) of OMA does not require public bodies to answer questions or otherwise interact with the public. Ill. Att'y Gen. PAC Req. Rev. Ltr. 37391, issued January 11, 2016, at 7. This provision provides the public with a statutory right to address the Council, which it was permitted to do via e-mail and telephone calls at the April 13, 2020, special meeting. You also allege that during the meeting some council members moved about, had side conversations, and violated social distancing requirements set out by the governor. OMA is intended to ensure that "actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 *et seq.* (West 2018). OMA does not, however, govern the actions of individual council members, such as members leaving the room during the meeting or sending text and e-mail messages while individuals are providing public comment.<sup>14</sup> Therefore, this allegation is not subject to review by this office.

Your allegation that members of the public may not have been able to provide public comment at the reconvened April 14, 2020, meeting because they did not receive enough notice was premature, because you submitted that complaint on April 13, 2020. Under section

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<sup>13</sup>Joliet City Council, Special Meeting, April 13, 2020, 12:05, *available at* <https://www.youtube.com/watch?v=PP1RiD6fxRE>.

<sup>14</sup>The Public Access Counselor's authority is limited to resolving disputes concerning the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)) and OMA. 15 ILCS 205/7(c) (West 2018). To the extent that your Request for Review could be construed as alleging violations of the Governor's Disaster Proclamations, Executive Orders, or other laws aside from FOIA or OMA, the Public Access Counselor does not have authority to review those allegations.

[REDACTED]  
May 1, 2020

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3.5(a) of OMA, "[a] person who believes that a violation of this Act by a public body **has occurred** may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later 60 days **after the alleged violation.**" (Emphasis added.) This office notes, however, that section 2.02(a) of OMA provides, in pertinent part:

Public notice of any \* \* \* reconvened meeting, shall be given at least 48 hours before such meeting, which notice shall also include the agenda for the special, rescheduled, or reconvened meeting  
\* \* \* **The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and \* \* \* an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.** (Emphasis added.)

Accordingly, this office concludes that your Request for Review did not provide sufficient facts to establish that, under the circumstances in effect at the time, the Council violated the requirements of OMA at its April 13, 2020, special meeting.

This letter serves to close this file. If you have questions, please contact me at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

[REDACTED]  
SHANNON BARNABY  
Assistant Attorney General  
Public Access Bureau

62592 o no fi war mun

cc: *Via electronic mail*  
The Honorable Bob O'Dekirk  
Mayor  
City of Joliet  
150 West Jefferson Street  
Joliet, Illinois 60432  
ROdekirk@jolicity.org



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 29, 2020

*Via electronic mail*

*Via electronic mail*

Mr. Brian P. Crowley  
Franczek, P.C.  
300 South Wacker Drive, Suite 3400  
Chicago, Illinois 60606  
bpc@franczek.com

RE: OMA Request for Review – 2020 PAC 62701

Dear [REDACTED] and Mr. Crowley:

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 is unable to conclude that the Board of Education of New Trier Township High School District 203 (Board) improperly restricted [REDACTED] statutory right to address the Board at its April 20, 2020, meeting.

In his Request for Review, [REDACTED] alleged that he wanted to submit a public comment for the Board's April 20, 2020, meeting, which was held remotely pursuant to an Executive Order issued by the Governor to stop the rapid spread of COVID-19 throughout the State,<sup>1</sup> but was unable to do so because the Board imposed a 2:00 p.m. deadline for submitting public comments. The meeting was scheduled to begin at 7:00 p.m. [REDACTED] also alleged that the Board violated OMA by limiting public comment to e-mail submissions to be read during that meeting, and by not providing a method for the public to verbally comment.

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<sup>1</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.



[REDACTED]  
Mr. Brian P. Crowley  
May 29, 2020  
Page 2

On May 1, 2020, this office sent a copy of the Request for Review to the Board President and requested a written response to the allegation that the Board required the public to submit public comments five hours before its April 20, 2020, meeting commenced. On May 8, 2020, counsel for the Board submitted a written response along with a copy of the April 20, 2020, meeting agenda and the Board's rules governing public comment; [REDACTED] replied to that response on May 13, 2020.

### DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." 5 ILCS 120/2.06(g) (West 2018)). This office notes that no Illinois reviewing court has interpreted this provision. The Public Access Bureau has consistently determined that a Request for Review must set forth facts demonstrating that a public body enforced its rules or guidelines to improperly restrict public comment in order to violate section 2.06(g) of OMA. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 43028, issued July 22, 2016 (allegation that public comment rules violate OMA insufficient to merit further action absent facts indicating that any member of the public was improperly restricted from addressing public officials); Ill. Att'y Gen. PAC Req. Rev. Ltr. 42560, issued July 7, 2016 (same).

The agenda for the Board's April 20, 2020, meeting indicated that the meeting would commence at 7:00 p.m., and states, in pertinent part, "Guidelines for Public Comment: To submit a public comment, please email [rustonl@nths.net](mailto:rustonl@nths.net) by 2:00 p.m. by Monday April 20<sup>th</sup>."<sup>2</sup>

[REDACTED] Request for Review stated that he considered submitting a public comment after discovering this guideline, "but did not, given the New Trier Board's prohibition, as it was after their 'published' deadline."<sup>3</sup> The Board's response to this office stated that the Board did not have an opportunity to permit or prevent [REDACTED] from participating in public comment at the meeting because he did not submit a comment. The response further stated that the Board requested the submission of public comments by 2:00 p.m. in order to organize them and other Board materials before the Board's first remote meeting, but asserted that the "2:00 p.m. deadline was not firm, and the Board would have accepted public

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<sup>2</sup>New Trier Township High School District 203 Board of Education, Regular Meeting (April 20, 2020).

<sup>3</sup>Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Office of the Attorney General (April 22, 2020) at 1.

[REDACTED]  
Mr. Brian P. Crowley  
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Page 3

comments up to the start of the meeting."<sup>4</sup> In his reply, [REDACTED] characterized that explanation as "preposterous[.]"<sup>5</sup> and suggested that countless other individuals may have been discouraged from submitting public comments because of the 2:00 p.m. time listed on the agenda, as he claimed to have been.

Although [REDACTED] inferred—perhaps not unreasonably—from the Board' written guideline that his public comments would be rejected if he submitted them less than five hours before the meeting commenced, the language of the guideline itself does not so state. The agenda requests that the public submit public comments by 2:00 p.m., but does not identify that time as a hard deadline or otherwise indicate that the Board would refuse to accept public comments submitted after 2:00 p.m. [REDACTED] did not submit a request to speak that was rejected by the Board, and the Board's response to this office indicated that his comment would have been accepted. In the absence of evidence that [REDACTED] or any other individual attempted to exercise his or her statutory right to address the Board at its April 20, 2020, meeting and was prohibited from doing so, this office is unable to conclude that the Board violated section 2.06(g) of OMA.


With respect to [REDACTED] allegation that the Board violated OMA by limiting public comment to e-mail submissions and not providing a method for members of the public to verbally address the Board, this office addressed the same allegation in an earlier Request for Review:

No provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude public bodies from physically convening meetings. It would be illogical to construe OMA as prohibiting a public body from meeting remotely during public health emergencies because the limitations of meeting in such a format interfere with the public body's ability to allow public comment in full accordance with its established and recorded rules. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that would defeat its purpose "or yield an absurd or unjust result."). Although you assert that the Board has technology that could have been used to enable members of the public to verbally address the Board during the March 20, 2020, meeting, this office is unable to

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<sup>4</sup>Letter from Brian P. Crowley, Franczek, to Steve Silverman, Bureau Chief, Public Access Bureau (May 8, 2020) at 2.

<sup>5</sup> Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Office of the Attorney General (May 13, 2020), at 2.

  
Mr. Brian P. Crowley  
May 29, 2020  
Page 4


conclude that the Board acted unreasonably under the circumstances. Allowing public comment to be submitted via e-mail and read aloud enabled the public to address the substance of their comments to the Board. Ill. Att'y Gen. PAC Req. Rev. Ltr. 62252, issued April 2, 2020, at 3.

This office reiterates that conclusion in this matter.

However, the Public Access Counselor is also charged with providing advice concerning OMA to public bodies and members of the public. 15 ILCS 205/7(a), (c) (West 2018). To that end, this office has issued guidance during the COVID-19 pandemic that recommends public bodies provide "multiple alternative means for the public to comment, such as, telephone or video-conference capabilities, in addition to the submission of emailed or written comments."<sup>6</sup> If the Board has the technological capability to provide members of the public with an opportunity to verbally comment during remote meetings in a manner that would not entail a significant risk of disruption, this office encourages it to provide such an option.

This file is closed. If you have questions, you may contact me at (312) 814-6756. or [ssilverman@atg.state.il.us](mailto:ssilverman@atg.state.il.us).

Very truly yours,

  
STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

62701 o 206g pub comment proper sd

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<sup>6</sup>Office of the Attorney General, Public Access Counselor, Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic (April 9, 2020), available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf)

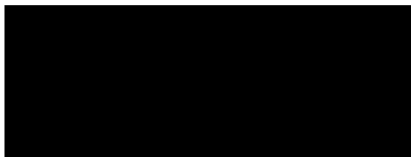


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 1, 2020

*Via electronic mail*



*Via electronic mail*

The Honorable Dawn Livingston  
President  
Board of Education  
Winnetka Public Schools District 36  
1235 Oak Street  
Winnetka, Illinois 60093  
board@winnetka36.org

RE: OMA Request for Review – 2020 PAC 62702

Dear [REDACTED] and Ms. Livingston:

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons discussed below, the Public Access Bureau has determined that no further action is warranted in this matter.

On April 22, 2020, this office received a Request for Review in which [REDACTED] alleged that the Board of Education (Board) of Winnetka Public Schools District 36 (District) violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) during a "remote" meeting on April 21, 2020.<sup>1</sup> Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." [REDACTED] stated that the Board's instructions for public comment included a 2:00 p.m. cutoff for submitting public comments before the meeting convened at 7:15

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<sup>1</sup>Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Office of the Attorney General (April 22, 2020), at 1.

[REDACTED]  
The Honorable Dawn Livingston

May 1, 2020

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p.m. He stated that he submitted comments to the Board at 6:50 p.m. asserting that the cutoff time was unreasonable, and that his comments should be considered timely. He further that the Board read his comments at the meeting even though he submitted them after the 2:00 p.m. cutoff time, and speculated that others who may have wanted to submit comments were discouraged from doing so. [REDACTED] also complained that the Board did not permit members of the public to verbally comment even though it has the technological capability to do so.

On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> The Governor then issued a series of executive orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>4</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>5</sup> Those provisions were extended through April 30, 2020, by Executive Order No. 2020-18, issued April 1, 2020.

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<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

<sup>5</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

[REDACTED]  
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Page 3

In light of these provisions, public bodies such as the Board recently have been using various forms of technology to conduct meetings without the physical presence of their members or members of the public. In 2020 PAC 62552, this office addressed [REDACTED] allegation that the Board violated OMA at a previous meeting by limiting public comment to e-mail submissions and by not providing a method for members of the public to verbally address the Board:

No provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude public bodies from physically convening meetings. It would be illogical to construe OMA as prohibiting a public body from meeting remotely during public health emergencies because the limitations of meeting in such a format interfere with the public body's ability to allow public comment in full accordance with its established and recorded rules. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (a statute should not be construed in a way that would defeat its purpose "or yield an absurd or unjust result."). Although you assert that the Board has technology that could have been used to enable members of the public to verbally address the Board during the March 20, 2020, meeting, this office is unable to conclude that the Board acted unreasonably under the circumstances. Allowing public comment to be submitted via e-mail and read aloud enabled the public to address the substance of their comments to the Board. Ill. Att'y Gen. PAC Req. Rev. Ltr. 62252, issued April 2, 2020, at 3.

This office reiterates that conclusion in this matter.

With respect to [REDACTED] allegations concerning the 2:00 p.m. cutoff listed on the Board's instructions for the April 21, 2020, meeting, he acknowledged that he submitted public comments after the cutoff time and that the Board read his comments during the meeting. He then alleged that the Board violated its own public comment rule by reading the comments he submitted after the cutoff time. Section 2.06(g) is intended to accommodate the public's statutory right to address public officials. The Public Access Bureau has previously determined that a public body does not violate OMA by allowing a greater opportunity for public comment than its rules provide for. Ill. Att'y Gen. PAC Req. Rev. Ltr. 40206, issued March 9, 2016, at 2-3. Because the Board did not enforce its cutoff time to restrict [REDACTED] from providing public comment and because there is no indication that any other member of the public who wished to comment was prohibited from doing so, there is no basis for this office to

[REDACTED]  
The Honorable Dawn Livingston  
May 1, 2020  
Page 4

conclude that the Board violated section 2.06(g) of OMA. Accordingly, this office has determined that no further inquiry is warranted as to this matter.

However, the Public Access Counselor is also charged with providing advice concerning OMA to public bodies and members of the public. 15 ILCS 205/7(a), (c) (West 2018). To that end, this office has issued guidance during the COVID-19 Pandemic that recommends public bodies provide "multiple alternative means for the public to comment, such as, telephone or video-conference capabilities, in addition to the submission of emailed or written comments."<sup>6</sup> If the Board has the technological capability to provide members of the public with an opportunity to verbally comment during remote meetings in a manner that would not entail a significant risk of disruption, this office strongly encourages it to provide such an option. In addition, the Board should consider whether it is feasible to further facilitate the public's statutory right to address the Board by significantly shortening the cutoff time for submitting public comments or signing up for public comment.

This file is closed. If you have questions, you may contact me at (312) 814-6756 or [ssilverman@atg.state.il.us](mailto:ssilverman@atg.state.il.us).

Very truly yours,

[REDACTED]  
STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

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<sup>6</sup>Office of the Attorney General, Public Access Counselor, Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic (April 9, 2020), available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf)

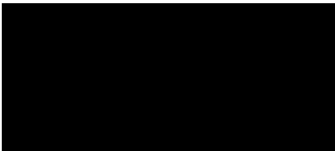


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 14, 2020

*Via electronic mail*



RE: OMA Requests for Review – 2020 PAC 62791

Dear [REDACTED]:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)).

On April 29, 2020, you submitted a Request for Review alleging that the Committee of the Whole of the Village of Algonquin (Committee) violated OMA by holding its April 14, 2020, meeting remotely through the use of "Zoom Video Conferencing and Chat" to discuss the development of the Terrace Hills Golf Course. Specifically, you allege that the Committee should have been cancelled the meeting because (1) the development of the golf course was not a critical issue, and (2) holding a public meeting through Zoom opens the public to possible privacy intrusions and harassment through incidents where potential hackers join online meetings and expose participants to unwanted messages.

**Disaster Proclamation and Executive Order**

On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>1</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>2</sup> The Governor then issued a series of executive orders

<sup>1</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.



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Page 2

for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>[3]</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>4</sup> This Order was twice extended, first through April 30, 2020 (Executive Order No. 2020-18, issued April 1, 2020), and then through May 31, 2020, with relatively minor modifications (Executive Order No. 2020-32, issued April 30, 2020).

In light of these provisions, public bodies such as the Committee recently have been using various forms of technology to conduct meetings without the physical presence of all their members and with alternative arrangements for the attendance of members of the public.

### **Propriety of Meeting**

Your complaint first alleges that the Committee should have cancelled its April 14, 2020, meeting because the development of the golf course is not a critical issue. Executive Orders 2020-07 and 2020-18 provide that "[p]ublic bodies are encouraged to postpone

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<sup>3</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

<sup>4</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020. On April 1, 2020, the Governor issued a second Disaster Proclamation (Gubernatorial Disaster Proclamation, issued April 1, 2020) and extended the applicability of several executive orders through April 30, 2020, including the Stay at Home Order (Executive Order No. 2020-18, Part 1, issued April 1, 2020). On April 30, 2020, Governor extended the applicability of several executive orders through May 29, 2020, including the executive order pertaining to the Open Meetings Act (Executive Order No. 2020-33, Part 1, issued April 30, 2020).

consideration of public business where possible."<sup>5</sup> Similarly, guidance from this office encourages public bodies to cancel public meetings not deemed essential.<sup>6</sup> However, no provision of OMA or of the Executive Orders pertaining to OMA requires a public body to cancel a meeting rather than holding the meeting remotely. The provisions of OMA do not address the subjects that a public body may consider at a particular time or how items are placed on an agenda; rather, OMA is concerned with advance notice and the opportunity for the public to attend and be heard at meetings. This office makes no determination as to the appropriateness of proceeding with this meeting during the restrictions on gatherings in place on April 14, 2020, as that question is beyond the scope of OMA and the authority of the Public Access Counselor. See 15 ILCS 205/7 (West 2018).

### Section 2.01 and Remote Meetings

Section 2.01 of OMA (5 ILCS 120/2.01 West 2018)) requires all public meetings to be "held at specified times and places which are convenient and open to the public." The concept of public convenience implies "a rule of reasonableness, not 'absolute accessibility' but 'reasonable accessibility.'" *Gerwin v. Livingston Co. Board*, 345 Ill. App. 3d 352, 362 (4th Dist. 2003). Executive Orders 2020-07 and 2020-18 provide that "When a meeting is necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to meetings to ensure members of the public may monitor the meeting[.]"<sup>7</sup>

Executive Order 2020-07, which was in effect at the time of the April 14, 2020, meeting, allows members of public bodies to participate in meetings remotely. In addition, guidance from this office provides that if public bodies are convening via electronic means, such as by conference call or by web assisted meetings, the public body should ensure that the public has a means to observe the meetings.<sup>8</sup> The guidance also provides that:

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<sup>5</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3; Executive Order No. 2020-18, Part 1, §5, issued April 1, 2020.

<sup>6</sup>See Public Access Counselor Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 3, available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).

<sup>7</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3; Executive Order No. 2020-18, Part 1, §5, issued April 1, 2020.

<sup>8</sup>See Public Access Counselor Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 3, available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).

Public bodies may consider using third party resources that provide conference call-in lines or other virtual meeting programs to host their meetings during the COVID-19 pandemic. Public bodies should be aware, however, that there have been recent instances of outside parties 'hijacking' video conferences by inserting inappropriate and offensive language or graphic images onto the screen that all participants can see. If using a web-based conference call or video-conferencing service, public bodies should exercise caution and thoroughly review all terms and conditions of use, including any provisions related to security, data collection, and users' privacy.<sup>[9]</sup>

No provision of OMA addresses the means by which public bodies provide the public with access to its meetings during public health emergencies that preclude or limit public bodies from physically convening meetings. Neither OMA nor Executive Order 2020-07 precludes public bodies from using the technology offered by third-party providers, such as Zoom, to conduct public meetings and provide access to the public. As noted above, OMA requires public meetings to be reasonably accessible to the public, and this office's guidelines state that public bodies may consider using third-party resources, such as Zoom, to host virtual meetings.

The Committee's agenda for the April 14, 2020, meeting provides: "If you would like to listen to the meeting, please go to <https://zoom.us/j/983676988> or dial in (877)853-5257 or (888)475-4499 webinar ID 983 676 988."<sup>10</sup> You have not alleged that members of the public could not attend the meeting through the access provided. Rather you appear to complain that the use of third-party remote access to meetings violates OMA because of the possibility of compromise of personal data and intrusion into the meeting by outside parties. While privacy considerations are a serious concern, the COVID-19 pandemic has created novel circumstances not previously encountered. Here, the Committee provided remote access to the public through Zoom video and telephone call-in features. Under the circumstances, the Committee allowed the public reasonable access to its April 14, 2020, meeting. Accordingly, this office has determined that no further action is warranted regarding matter.

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<sup>9</sup>Public Access Counselor Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 4, available at [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).

<sup>10</sup>Village of Algonquin, Committee of the Whole, Agenda (April 14, 2020), available at [https://www.algonquin.org/egov/documents/1586617607\\_69805.pdf](https://www.algonquin.org/egov/documents/1586617607_69805.pdf).

[REDACTED]  
May 14, 2020  
Page 5

This file is closed. If you have questions, please contact me at (312) 814-5201, [esteinberg@atg.state.il.us](mailto:esteinberg@atg.state.il.us), or at the Chicago address on the first page of this letter.

Very truly yours,

[REDACTED]  
EDIE STEINBERG  
Senior Assistant Attorney General  
Public Access Bureau [REDACTED]

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cc: *Via electronic mail*  
The Honorable John Schmitt  
President  
Village of Algonquin  
2200 Harnish Drive  
Algonquin, Illinois 60102  
[johnschmitt@algonquin.org](mailto:johnschmitt@algonquin.org)

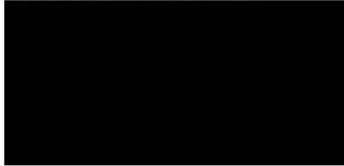


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 26, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 63027

Dear [REDACTED]:

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons discussed below, the Public Access Bureau has determined that no further action is warranted in this matter.

On May 18, 2020, this office received your Request for Review alleging that the Kendall County Board (Board) potentially violated OMA by barring you from physically attending its May 5, 2020, meeting.<sup>1</sup> You argued that the Board did not provide sufficient information about how to attend the meeting remotely, stating that the agenda did not include such information and alleging that the remote meeting instructions posted with the agenda on the Board's website merely encouraged, rather than mandated, that any interested members of the public attend the meeting remotely. You stated that you showed up at the County Building on May 5, 2020, to try to attend the meeting, but that you were turned away despite the presence of only four individuals in the meeting room.

Section 2.01 of OMA (5 ILCS 120/2.01 (West 2018)) provides, in relevant part, 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." The meaning of "convenient and open to the public" must be considered in conjunction with the Governor of Illinois' disaster proclamations

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<sup>1</sup>This office notes that although you allege that the Board Chairman exceeded his authority by closing the Kendall County Office Building to the public, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018)). See 15 ILCS 205/7(c)(3) (West 2018). Because OMA does not govern the scope of a county board chairperson's authority in issuing a disaster proclamation, that allegation is not subject to review by this office.

concerning the COVID-19 pandemic, which both relax the physical attendance requirements of OMA for members of public bodies and require members of the public to generally remain in their homes.

Specifically, on March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster Proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> Subsequent Disaster Proclamations extended the exercise of emergency powers through the end of May 2020.<sup>4</sup>

The Governor also issued a series of executive orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended. \* \* \* When a meeting is necessary, public bodies are encouraged to provide video, audio, and/or telephonic access to meetings to ensure members of the public may monitor the meeting, and to update their websites and social media feeds to keep the public fully apprised of any modifications to their meeting schedules or the format of their meetings due to COVID-19[.]<sup>[5]</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of

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<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Gubernatorial Disaster Proclamation, issued April 1, 2020, at 2; Gubernatorial Disaster Proclamation, issued April 30, 2020, at 3.

<sup>5</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

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Page 3

residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations,\* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>6</sup> The intent of the Order is "to ensure that the maximum number of people self-isolate in their places of residence to the maximum extent feasible, while enabling essential services to continue, to slow the spread of COVID-19 to the greatest extent possible."<sup>7</sup> The "stay at home" directive was extended through the date of the May 5, 2020, Board meeting at issue.<sup>8</sup>

In light of these provisions, public bodies such as the Board recently have been using various forms of technology to conduct meetings without the physical presence of their members or members of the public. Although you argued that the Board did not provide clear information about closing its May 5, 2020, meeting to the public, the remote meeting instructions the Board posted with the agenda stated: "The County Office Building is currently closed to the public. For your safety and others, please attend the meeting by phone or computer."<sup>9</sup> The document then provided log-in information for members of the public to attend the meeting remotely. These instructions clearly and unambiguously stated that members of the public could attend the meeting online but not in person, the reason obviously being the pandemic.

Under the particular, unprecedented circumstances of the COVID-19 pandemic, and pursuant to the Governor's emergency "stay at home" orders, a public body may fulfill the "convenient and open to the public" requirement by providing legitimate means for members of the public to access the meeting remotely.<sup>10</sup> Thus, although you allege that the conditions surrounding the Board's May 5, 2020, meeting—a large meeting room with only four people in attendance, and your wearing of a mask and gloves—would have allowed you to safely participate in person, the Board was not obligated to permit in-person attendance by members of the public so long as it facilitated sufficient remote attendance. Further, although you cited the guidance this office issued on OMA compliance for the duration of COVID-19 restrictions in

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<sup>6</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

<sup>7</sup>Executive Order No. 2020-10, §16, issued March 20, 2020.

<sup>8</sup>Executive Order No. 2020-32, §2(1), issued April 30, 2020.

<sup>9</sup>Kendall County Board and Forest Preserve Commission 05-05-2020 Remote Meeting Attendance, <https://www.co.kendall.il.us/Home/Components/Calendar/Event/1686/318> (last visited May 22, 2020).

<sup>10</sup>You also alleged that the Board had not posted audio recordings of four recent Board meetings on its website and having to request these audio recordings under the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)) is not convenient and open. This office notes, however, that the Board has now posted videos for three of those meetings, including the one on May 5, 2020. *See* Kendall County Board Meetings, <https://vimeopro.com/kendallcovidvideo/boardmeetings> (last visited May 22, 2020). Although public bodies are encouraged to post on their websites videos of their open meetings, particularly during the COVID-19 pandemic, OMA does not require the online posting of meeting audio or video after meetings conclude.

  
May 26, 2020

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support of your claims, this office did not advise that public bodies must hold in-person meetings with members of the public. Rather, this office advised that public bodies "utilize the availability of remote participation to help curb the spread of COVID-19."<sup>11</sup> While some Board members may have been physically present in the meeting room, the video of the meeting reflects that the meeting was conducted via a virtual meeting program, with various Board members and members of the public participating remotely. This office's guidance provides:

If public bodies are convening via electronic means, such as by conference call or by web-assisted meetings, the public body should ensure that the public has a means to both observe and comment during these meetings. This can be achieved by sharing conference call or other log-in information in the notice of the public meeting.<sup>[12]</sup>

Therefore, the guidance issued by this office does not support your claim that the Board violated OMA.

Because the Board was not required to allow you to physically attend its May 5, 2020, meeting in order to hold that meeting at a specific time and place that was "convenient and open to the public," this office has determined that no further action is warranted in this matter. This file is closed. If you have questions, you may contact me at (312) 814-8413 or [jjones@atg.state.il.us](mailto:jjones@atg.state.il.us).

Very truly yours,

  
JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau


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<sup>11</sup>Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 4 (updated April 9, 2020), [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).

<sup>12</sup> Guidance to Public Bodies on the Open Meetings Act and the Freedom of Information Act during the COVID-19 Pandemic, at 4 (updated April 9, 2020), [http://foia.ilattorneygeneral.net/pdf/OMA\\_FOIA\\_Guide.pdf](http://foia.ilattorneygeneral.net/pdf/OMA_FOIA_Guide.pdf).



  
May 26, 2020

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cc: *Via electronic mail*  
The Honorable Scott Gryder  
Chairman  
Kendall County Board  
111 West Fox Street  
Yorkville, Illinois 60560  
[sgryder@co.kendall.il.us](mailto:sgryder@co.kendall.il.us)

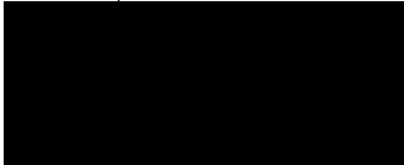


OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

May 29, 2020

*Via electronic mail*



RE: OMA Request for Review – 2020 PAC 63089

Dear 

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)).

On May 21, 2020, this office received your Request for Review alleging that the Board of Education (Board) of New Trier Township High School District 203 (District) and its Policy Committee (Policy Committee) violated OMA by failing to provide the public with telephone access to its May 18, 2020, Board meeting and May 19, 2020, Policy Committee meeting that were live-streamed on the Zoom platform. You stated that you were unable to attend the meetings, which were held remotely pursuant to an Executive Order issued by the Governor to stop the rapid spread of COVID-19 throughout the State,<sup>1</sup> because you did not have internet access at the time of the meetings. You also stated that when you later obtained a device capable of connecting to the May 18, 2020, Board meeting, you were required to submit your name and e-mail address in order to attend. In addition, you asserted that the Board improperly restricted your ability to provide public comment by requiring comments to be submitted before the meeting commenced.

Section 1 of OMA (5 ILCS 120/1 (West 2018)) provides that "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." Section 1 further provides that "citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way."

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<sup>1</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

May 29, 2020

Page 2

On May 27, 2020, an Assistant Attorney General in the Public Access Bureau contacted counsel for the District concerning your complaint about requiring members of the public to submit their names and e-mail addresses in order to attend remote meetings. Counsel conveyed information from a District official confirming that (1) Zoom rather than the District collects attendees' names and e-mail addresses, and does not provide them to the District; (2) the District does not appear to have the ability to disable the requirement that people submit their names and e-mail addresses to gain access to meetings via Zoom; and (3) Zoom does not require verification of the authenticity of the information submitted by attendees. In other words, an individual who is unwilling to submit his or her legal name may access the Board's meetings by submitting a pseudonym. Further, the District official stated that the Board would provide members of the public who do not wish to submit their legal names or e-mail addresses to Zoom with the alternative of accessing future meetings by telephone. Accordingly, this office will take no further action concerning your allegation that the Board unreasonably restricted access to its meetings by requiring members of the public to submit their names and e-mail addresses.

With respect to public comment, section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." No Illinois reviewing court has interpreted this provision. The Public Access Bureau has consistently determined that a Request for Review must set forth facts demonstrating that a public body enforced its rules or guidelines to improperly restrict public comment in order to violate section 2.06(g) of OMA. *See, e.g., Ill. Att'y Gen. PAC Req. Rev. Ltr. 43028*, issued July 22, 2016 (allegation that public comment rules violate OMA insufficient to merit further action absent facts indicating that any member of the public was improperly restricted from addressing public officials); *Ill. Att'y Gen. PAC Req. Rev. Ltr. 42560*, issued July 7, 2016 (same).

The agenda for the Board's May 18, 2020, meeting indicated that the meeting would commence in open session at 6:00 p.m., and states, in pertinent part, "Guidelines for Public Comment: To submit a public comment, please email [rustonl@nths.net](mailto:rustonl@nths.net) by 5:00 p.m. by Monday May 18<sup>th</sup>."<sup>2</sup> You asserted that you intended to submit a public comment for that meeting but "missed the Board's published deadline for submission of my comments, and, therefore, did not submit them."<sup>3</sup>

Although you inferred—perhaps not unreasonably—from the Board's written guideline that your public comment would be rejected if it was submitted less than an hour

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<sup>2</sup>New Trier Township High School District 203 Board of Education, Regular Meeting (May 18, 2020).

<sup>3</sup>Letter from [REDACTED] to Sarah Pratt, Public Access Counselor, Public Access Bureau, Office of the Attorney General (May 21, 2020), at 2.

[REDACTED]  
May 29, 2020

Page 3

before the meeting commenced, the language of the guideline itself does not so state. The agenda requested that members of the public submit public comments by 5:00 p.m., but does not identify that time as a hard deadline or otherwise indicate that the Board would refuse to accept public comments submitted after 5:00 p.m. Further, as this office has previously emphasized: "No provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude public bodies from physically convening meetings." Ill. Att'y Gen. PAC Req. Rev. Ltr. 62252, issued April 2, 2020, at 3. In the absence of such a provision, the Public Access Bureau is unable to conclude that the Board violated OMA by requesting members of the public submit public comments one hour before its remote meeting commenced.

This file is closed. If you have questions, you may contact me at (312) 814-6756. or [ssilverman@atg.state.il.us](mailto:ssilverman@atg.state.il.us).

Very truly yours,

[REDACTED]  
STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

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cc: *Via electronic mail*  
The Honorable Cathleen H. Albrecht  
New Trier Township High School District 203  
7 Happ Road  
Northfield, Illinois 60093  
[albrechc@newtrier.k12.il.us](mailto:albrechc@newtrier.k12.il.us)

cc: *Via electronic mail*  
Mr. Brian P. Crowley  
Franczek, P.C.  
300 South Wacker Drive, Suite 3400  
Chicago, Illinois 60606  
[bpc@franczek.com](mailto:bpc@franczek.com)