



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 30, 2016

PUBLIC ACCESS OPINION 16-015
(Request for Review 2016 PAC 45117)

OPEN MEETINGS ACT:
Taking Final Action on Matter
Not on Meeting Agenda

Mr. Matt Modrovsky
24 West Washington
Caseyville, Illinois 62232

The Honorable Len Black, Mayor
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232

Dear Mr. Modrovsky and Mr. Black:

This is a binding opinion issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons discussed below, this office concludes that the Board of Trustees of the Village of Caseyville (Board) violated section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2014)) at its November 16, 2016, meeting by voting to amend and approve a settlement agreement, although the general subject matter of that final action was not included on its meeting agenda.

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BACKGROUND

On November 19, 2016, Mr. Matt Modrovsky, who is a member of the Board, submitted a Request for Review alleging that the Board violated OMA during its November 16, 2016, meeting by voting on an item that was not on the agenda. Specifically, Mr. Modrovsky stated: "Board of trustees voted on a motion to amend the terms of a settlement agreement concerning a lawsuit brought against the Village of Caseyville by 'Jose Alvarez.' The issue was not placed on the agenda and posted more than 48 hours prior to the meeting in violation of the Open Meeting Act."¹

On November 28, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village Clerk and asked that the Village or its representative provide a written response to the allegations contained therein along with copies of the agenda and minutes of the November 16, 2016, meeting.²

On December 3, 2016, Mr. Rob Watt, the Village Clerk, responded on behalf of the Board by sending the Public Access Bureau a written response to Mr. Modrovsky's Request for Review. In his response, the Village Clerk states, in pertinent part:

1. Mr. Matt Modrovsky asserts that the Agenda for the November 16, 2016 Regular Board Meeting did not have the general subject matter of the motion to amend a settlement agreement, therefore, it should not have been voted on. This, is in fact, a true statement. The Agenda for this meeting was posted on November 14, 2016 and at no time was there any discussion, nor was I asked by any Board Member, to place the amending of the settlement agreement to the November 16, 2016 Regular Board Meeting Agenda.^[3]

The Village Clerk also provided a copy of the agenda and a link to a video recording of the relevant part of the November 16, 2016, meeting, but stated that the meeting minutes had not

¹OMA-Request for Review by Public Access Counselor (PAC) from Matt Modrovsky (November 19, 2016).

²Letter from Benjamin Reed, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Rob Watt, Clerk, Village of Caseyville (November 28, 2016).

³Letter from Rob Watt, Village Clerk, Village of Caseyville, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (December 3, 2016).

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been approved at the time of the Board's response.⁴ The minutes were later made publicly available on the Village website.⁵ On December 12, 2016, this office forwarded a copy of the Village's response to Mr. Modrovsky.⁶ He did not reply.

ANALYSIS

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2014). Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2014)) provides that "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Section 2.02(c) of OMA further provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The Senate debate on House Bill No. 4687, which as Public Act 97-827, effective January 1, 2013, added section 2.02(c) of OMA, indicates that the General Assembly intended this provision to ensure that agendas provide sufficiently descriptive advance notice of the matters upon which a public body anticipates taking final action:

[T]here was just no real requirement as to how specific [public bodies] needed to be to the public of what they were going to discuss that would be final action. And this just says that you have to have a * * * general notice, if you're going to have and take final action, as to generally what's going to be discussed so that – that people who follow their units of local government know what they're going to be acting upon. Remarks of Sen. Dillard, May 16, 2012, Senate Debate on House Bill No. 4687, at 47.

This office reviewed the agenda, minutes, and a video recording of the November 16, 2016, Board meeting. The agenda contains an item entitled, "OLD BUSINESS."⁷ The meeting minutes describe, among other things, the following action concerning Mr. Alvarez's

⁴Letter from Rob Watt, Village Clerk, Village of Caseyville, to Benjamin Reed, Assistant Attorney General, Public Access Bureau (December 3, 2016).

⁵Village of Caseyville [Board of Trustees], Regular Meeting, November 16, 2016, Minutes, <http://www.caseyville.org/meetingdates.html> (last visited December 23, 2016).

⁶Letter from Benjamin J. Reed, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Matt Modrovsky (December 12, 2016).

⁷Village of Caseyville [Board of Trustees], Regular Board Meeting, Agenda Item 6 (November 16, 2016).

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settlement agreement under that agenda item:

Motion was made by Brenda Williams, seconded by John Buckley, to approve this agreement with the insertion in Section 12 that approves Mr. Alvarez's retirement date.

Attorney Brian Manion states that this is not on the Agenda. Brenda Williams mentions the Judge said it[']s old business and you can bring it up. Brian Manion states you can talk about it but you can't take any action since it is not on the agenda. John Buckley mentions that the Judge said we can, under old business, because it has been brought up we can still do that. * * * Brian Manion mentions that it is his legal opinion that it would be an illegal vote contrary to the Open Meetings Act to vote on something note [sic] on the agenda. * * * Mayor Black asks Brenda Williams what she wants to do and she tells him she has a motion on the floor with a second.

No further questions on the motion.

Voting on the motion: G.W. Scott – Yea, Jackie Mitchell – Absent, Wally Abernathy – Yea, John Buckley – Yea, Brenda Williams – Yea, Matt Modrovsky - No

4 Yeas, 1 Nay and 1 Absent – Motion Passed. (Emphasis in original.)^[8]

The "Old Business" agenda item under which this discussion and vote occurred does not provide any information disclosing the "general subject matter" of a settlement agreement to be considered under "Old Business."⁹ Even prior to the addition of section 2.02(c) to OMA, the Illinois Appellate Court held that the generic agenda item "New Business" did not provide sufficient advance notice of final action by a public body. *Rice v. Board of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002). It is undisputed that the Board took final action on the motion to approve the settlement agreement at the November 16, 2016, meeting notwithstanding the lack of any reference thereto in the agenda. Accordingly, this office

⁸Village of Caseyville [Board of Trustees], Regular Board Meeting, Minutes of November 16, 2016, at 6-8, <http://www.caseyville.org/meetingdates.html> (last visited December 23, 2016).

⁹Village of Caseyville, Village Board, Agenda (November 16, 2016).

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concludes that the Board violated section 2.02(c) of OMA because its meeting agenda did not include the general subject matter of the settlement agreement that was the subject of final action.

FINDINGS AND CONCLUSIONS

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

- 1) On November 19, 2016, Mr. Matt Modrovsky submitted a Request for Review to this office in which he alleged that the Board of Trustees of the Village of Caseyville violated OMA at its November 16, 2016, meeting by taking final action on an item that was not on the agenda. Mr. Modrovsky's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2015 Supp.)). Therefore, the Attorney General may issue a binding opinion with respect to this matter.
- 2) On November 28, 2016, the Public Access Bureau sent a copy of the Request for Review to the Village Clerk and asked the Village to respond to Mr. Modrovsky's allegations and to provide copies of the Board's November 16, 2016, agenda and minutes for this office's review.
- 3) On December 3, 2016, the Village Clerk, on behalf of the Board, provided a written response and copies of the agenda and a video recording of the November 16, 2016, meeting. The response confirmed that the Board took final action on a motion to amend and approve a settlement agreement, and that the general subject matter of that motion did not appear on the meeting agenda. The meeting minutes had not been approved at the time of the Village Clerk's response, but those minutes were subsequently posted on the Village's website and reviewed by this office.
- 4) Section 2.02(c) of OMA provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." The posted agenda for the Board's November 16, 2016, meeting did not include any agenda item giving notice that the Board would take final action to amend or approve the settlement agreement, nor any item identifying the general subject matter of that action.
- 5) Based on this office's review of the pertinent materials, the Board took final action on a motion to amend and approve a settlement agreement at its November 16, 2016, regular meeting. Accordingly, because the Board took final action on an item that was not

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included on the meeting agenda, the Attorney General concludes that the Board violated section 2.02(c) of OMA.

In accordance with these findings of fact and conclusions of law, the Board is directed to remedy this violation by reconsidering its November 16, 2016, final action on the settlement agreement at a properly noticed meeting for which the agenda contains the general subject matter of the amendment and approval of the above-referenced settlement agreement. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA (5 ILCS 120/7.5 (West 2014)).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2014). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Matt Modrovsky as defendants. *See* 5 ILCS 120/7.5 (West 2014).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

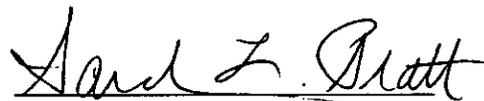
CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 16-015) upon:

Mr. Matt Modrovsky
24 West Washington
Caseyville, Illinois 62232
mattmodrovsky@att.net

The Honorable Len Black, Mayor
Village of Caseyville
909 South Main Street
Caseyville, Illinois 62232
lblack@caseyville.org

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on December 30, 2016.



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Public Access Counselor

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