



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

October 30, 2018

**PUBLIC ACCESS OPINION 18-015**  
**(Request for Review 2018 PAC 54229)**

OPEN MEETINGS ACT:  
Discussion of the Duties and  
Salaries of Elected Officials  
in Closed Session

The Honorable Michelle Anderson  
McLean County Auditor  
2403 Savanna Road  
Bloomington, Illinois 61705

The Honorable Don Knapp  
McLean County State's Attorney  
104 West Front Street, Room 605  
P.O. Box 2400  
Bloomington, Illinois 61702

Dear Ms. Anderson and Mr. Knapp:

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 2016)). For the reasons discussed below, this office concludes that the Finance Committee (Committee) of the McLean County Board (Board) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2017 Supp.)) during its June 6, 2018, meeting by improperly discussing in closed session certain matters related to elected county officials.

**BACKGROUND**

On July 30, 2018, Ms. Michelle Anderson, McLean County Auditor, submitted a Request for Review to the Public Access Counselor, with supporting documents, alleging "the

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Finance Committee of the McLean County Board held closed meetings improperly."<sup>1</sup> Ms. Anderson alleged that the Committee held improper closed meetings pursuant to the section 2(c)(1) exception in OMA (5 ILCS 120/2(c)(1) (West 2017 Supp.)) "to discuss individual salaries of the independently elected officials"<sup>2</sup> during its May 2, 2018, and June 6, 2018, meetings.<sup>3</sup> She also noted that she anticipated that a similar violation would occur at the August 1, 2018, Committee meeting.<sup>4</sup> As discussed below, the scope of section 2(c)(1) is limited to certain matters concerning specific employees. Ms. Anderson contended that as the County Auditor, she is an elected public official rather than an employee.<sup>5</sup> The Request for Review also noted that although section 2(c)(3) of OMA (5 ILCS 120/2(c)(3) (West 2017 Supp.)) refers to discussion of individuals in public office,<sup>6</sup> that exception would not apply because the Committee is not authorized by law or ordinance to remove elected officers from office.<sup>7</sup>

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<sup>1</sup>Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 5. The Request for Review totaled 20 pages, including a cover e-mail, three completed OMA Request for Review by Public Access Counselor forms (the first form related to alleged OMA violations at the May 2, 2018, Committee meeting, the second form related to alleged OMA violations at the June 6, 2018, Committee meeting, and the third form related to alleged OMA violations anticipated at the August 1, 2018, Committee meeting), a memorandum from Michelle L. Anderson to Sarah Pratt, Public Access Counselor, Office of the Attorney General, outlining Ms. Anderson's allegations, Committee meeting agendas for the three meetings in question, and various e-mails related to the allegations.

<sup>2</sup>Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 5, 6.

<sup>3</sup>Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 5.

<sup>4</sup> Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 4,6.

<sup>5</sup>Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 5.

<sup>6</sup>Section 2(c)(3) of OMA permits a public body to enter closed session to discuss "[t]he selection of a person to fill a public office, as defined in this Act, including a vacancy in a public office, when the public body is given power to appoint under law or ordinance, or the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance."

<sup>7</sup>Request for Review from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018), at 5.

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On August 1, 2018, the Public Access Bureau sent a copy of the Request for Review to the Board's chairman and requested copies of the agenda and the open and closed session minutes and closed session verbatim recording of the June 6, 2018, meeting for this office's confidential review, together with a written response to the allegations concerning that meeting.<sup>8</sup>

On August 10, 2018, the then-McLean County State's Attorney, Jason Chambers, furnished this office with copies of the open session minutes and the closed session verbatim recording, as well as a complete version of the Committee's written response<sup>9</sup> and a redacted version to share with Ms. Anderson.<sup>10</sup> On August 17, 2018, the Public Access Bureau forwarded a copy of the Committee's redacted response letter to Ms. Anderson.<sup>11</sup> She did not reply.

On September 25, 2018, this office extended the time within which to issue a binding opinion by 21 business days, to October 30, 2018, pursuant to section 3.5(e) of OMA.<sup>12</sup>

### 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 2016).

#### Scope of Review

Ms. Anderson's Request for Review alleges violations of OMA at both the May 2, 2018, and June 6, 2018, Committee meetings, and alleges that she believed a similar violation

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<sup>8</sup>Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to John McIntyre, Board Chairman, McLean County Board (August 1, 2018).

<sup>9</sup>Letter from Jason Chambers, McLean County State's Attorney, to Shannon Barnaby, Assistant Attorney General (August 10, 2018).

<sup>10</sup>Section 3.5(c) of OMA (5 ILCS 120/3.5(c) (West 2016)) provides, in pertinent part: "Upon request, the public body may also furnish the Public Access Counselor with a redacted copy of the answer excluding specific references to any matters at issue. The Public Access Counselor shall forward a copy of the answer or redacted answer, if furnished, to the person submitting the request for review."

<sup>11</sup>Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to The Honorable Michelle Anderson, Auditor, McLean County (August 17, 2018).

<sup>12</sup>Letter from Shannon Barnaby, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to The Honorable Michelle Anderson, County Auditor, McLean County, and The Honorable Don Knapp, McLean County State's Attorney (September 25, 2018).

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would occur on August 1, 2018. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) 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 60 days after the alleged OMA violation. If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person **utilizing reasonable diligence**, the request for review may be made within 60 days of the discovery of the alleged violation. (Emphasis added.)

Ms. Anderson submitted her Request for Review on July 30, 2018.<sup>13</sup> The May 2, 2018, Committee meeting, therefore, occurred more than 60 days before Ms. Anderson submitted her Request for Review. Based on these facts, pursuant to section 3.5(a) of OMA, this office is precluded from reviewing the allegations related to the May 2, 2018, meeting.<sup>14</sup>

Similarly, the August 1, 2018, meeting had not yet taken place when Ms. Anderson's Request for Review was filed. Based on this fact, again, pursuant to section 3.5(a) of OMA, this office lacks the authority to review an anticipated violation of OMA at the August 1, 2018, meeting. Accordingly, this office's review is limited to allegations concerning the June 6, 2018, Committee meeting.

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<sup>13</sup>Letter from Michelle L. Anderson, McLean County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (e-mailed to the Public Access Bureau on July 30, 2018).

<sup>14</sup>Section 3.5(a) of OMA does permit a person to file a Request for Review within 60 days of discovering an alleged violation, for up to two years after the date of the alleged violation, but only if the person did not discover facts concerning the alleged violation within 60 days after it allegedly occurred despite using *reasonable diligence*. Along with her Request for Review, Ms. Anderson provided this office with an e-mail that she received from a Committee member dated May 2, 2018, which stated: "This evening at finance we will be discussing the elected officials['] salary for all countywide elected officials. \* \* \* We are looking to have an executive session where we will discuss individual salaries."<sup>14</sup> Based on that e-mail, Ms. Anderson would have been aware of the alleged OMA violations committed during the May 2, 2018, Committee meeting on or near that date and, as a result, cannot assert that she did not discover the violation within 60 days after it allegedly occurred.

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### Section 2(c)(1) of OMA

Section 2(a) of OMA provides that all meetings of a public body shall be open to the public unless the subject of the meeting falls within one of the exceptions set out in section 2(c) of OMA (5 ILCS 120/2(c) (West 2017 Supp.)). The section 2(c) exceptions are to be "strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2017 Supp.); *see also Henry v. Anderson*, 356 Ill. App. 3d 952, 996-97 (4th Dist. 2005) (strictly construing section 2(c)(1) of OMA.)

The minutes of the Committee's June 6, 2018, meeting indicate that it publicly cited and identified section 2(c)(1) of OMA as its basis for closing a portion of that meeting.<sup>15</sup> This office's review of the relevant closed session verbatim recording confirmed that the Committee's discussion concerned the duties of two elected county officials, the county coroner and the county auditor.<sup>16</sup>

The section 2(c)(1) exemption is limited to discussion of the "appointment, employment, compensation, discipline, performance or dismissal of **specific employees of the public body** or legal counsel for the public body[.]" (Emphasis added.) The "use of the phrase 'specific employees of the public body' significantly limits the scope of the exception." Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3 (concluding that public body improperly discussed budgetary matters in closed session pursuant to the exception, rather than "the relative merits of individual employees, or the conduct of individual employees"). Further, the Attorney General has issued a binding opinion concluding that section 2(c)(1) does not authorize closed session discussions concerning occupants of public office. Ill. Att'y Gen. Pub. Acc. Op. No. 17-013, issued November 21, 2017, at 4 ("Because elected members of a Village Board are occupants of a public office, not 'employees' of public bodies, section 2(c)(1) would not have provided a basis for the Board to close a meeting to discuss the conduct of a Board member."). Nonetheless, the Committee's redacted response to this office argued that "[c]ountywide elected or appointed department heads most assuredly meet the definition of an employee for OMA purposes[.]" and therefore the Committee's June 6, 2018, discussion was authorized by section 2(c)(1) of OMA.<sup>17</sup>

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<sup>15</sup>McLean County Board, Finance Committee, Meeting, June 6, 2018, Minutes 5-6.

<sup>16</sup>McLean County Board, Meeting, June 6, 2018, Audio File (on file with Board).

<sup>17</sup>Letter from Jason Chambers, McLean County State's Attorney, to Shannon Barnaby, Assistant Attorney General (August 10, 2018), at 1.

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In contrast with the section 2(c)(1) exception's focus on specific employees of the public body, section 2(c)(3) of OMA permits closed session discussion of "the discipline, performance or removal of the occupant of a public office, when the public body is given power to remove the occupant under law or ordinance." Section 2(d) of OMA (5 ILCS 120/2(d) (West 2017 Supp.)) defines "public office" for purposes of section 2 as:

a position created by or under the Constitution or laws of this State, the occupant of which is charged with the exercise of some portion of the sovereign power of this State. The term "public office" shall include members of the public body, but it shall not include organizational positions filled by members thereof, whether established by law or by a public body itself, that exist to assist the body in the conduct of its business. (Emphasis added.)

The offices of the county auditor and county coroner are both created under the Illinois Constitution of 1970,<sup>18</sup> and the occupant of each office is charged with some portion of the sovereign power of the State.<sup>19</sup> The occupants of those offices are "public officers." The term "employee" is defined in section 2(d) of OMA as "a person employed by a public body whose relationship with the public body constitutes an employer-employee relationship under the usual common law rules, and who is not an independent contractor." The two definitions are mutually exclusive; the occupant of a position cannot simultaneously be both a public officer and an employee. The issue raised by this Request for Review, therefore, is whether section 2(c)(1) of OMA applies at all to matters concerning the elected county officials at issue. The answer is that it does not.

In construing a statute, the primary goal "is to ascertain and give effect to the intent of the General Assembly." *Southern Illinoisan v. Illinois Dep't of Public Health*, 218 Ill. 2d 390, 415 (2006). "In determining legislative intent, the first step is to examine the language of the statute, which is the most reliable indicator of the legislature's objectives in enacting a particular law." *Alvarez v. Pappas*, 229 Ill. 2d 217, 228 (2008). Sections of the same statute must be read as a whole, and no word or paragraph should be interpreted so as to be rendered

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<sup>18</sup>See Ill. Const. 1970, art. VII, §4(c).

<sup>19</sup>For instance, the sovereign power of the State includes the power to appoint public officers: *People ex rel. Rudman v. Rini*, 64 Ill. 2d 321, 326 (1976). Both the county auditor and county coroner have the power to appoint public officers. See 55 ILCS 5/3-1007 (West 2016) (auditors are authorized to appoint deputy auditors who are county officers); 55 ILCS 5/3-3040, 3-3041 (West 2016) (coroners are authorized to appoint deputy coroners who are county officers).

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meaningless or superfluous. *People v. Chenoweth*, 2015 IL 116898, ¶21, 25 N.E.3d 612, 617 (2015).

The County does not have an employer-employee relationship with the county auditor or the county coroner under the usual common law rules. The existence of an employer-employee relationship does not depend upon a single factor; instead all relevant factors must be considered. *Wenholdt v. Industrial Comm'n*, 95 Ill. 2d 76, 80-81 (1983). The factors to be considered include: "the right to control the manner in which the work is done, the method of payment, the right to discharge, the skill required in the work to be done, and who provides tools, materials, or equipment." *Morgan Cab Co. v. Industrial Comm'n*, 60 Ill. 2d 92, 97 (1975). Of these factors, the Illinois Supreme Court stated that the "right to control the manner in which the work is done is the most important in determining the relationship." *Morgan Cab Co.*, 60 Ill. 2d at 97-98.

The Committee's response to this office asserted that the county auditor is an employee of the County because the Board: (1) has the authority to impose duties beyond those that she is statutorily required to perform, sets the county auditor's hours of operation, and requires her to report to the Board on a regular basis; (2) provides her salary and the method of payment by which she receives her compensation; and (3) provides the county auditor with the tools, materials, and equipment necessary to perform her duties.<sup>20</sup> The Committee confidentially furnished this office with additional explanation and argument for its position that the county auditor is an employee of the County based on certain portions of the verbatim recording of the closed session discussion at the June 6, 2018, meeting. Because the Committee provided this additional information and argument to the Public Access Counselor confidentially, sections 3.5(c) and 3.5(g) of OMA (5 ILCS 120/3.5(g) (West 2016)) preclude this office from discussing that information in this opinion.

In support of its argument that the county auditor is an employee of the County, the Committee cited certain portions of division 3-1 of the Counties Code (Code) (55 ILCS 5/3-1001, 5/3-1004, 5/3-1005, 5/3-1007) (West 2016)), which enumerates the basic powers and duties of county auditors, and generally describes the manner of the auditor's election and assumption of power, and office organization. Further, the Committee cited section 4-6001 of the Code (55 ILCS 5/4-6001 (West 2016)), which establishes the minimum compensation to be paid to certain county elected officials, including a county auditor, and 5-1005 of the Code (55 ILCS 5/5-1005 (West 2016)), which sets the basic powers of a county board, including, among other things, allowing a county board to set the hours of operation for county offices.

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<sup>20</sup>Letter from Jason Chambers, McLean County State's Attorney, to Shannon Barnaby, Assistant Attorney General (August 10, 2018), at 2-3. The Committee's response did not specifically address the portion of the closed session discussion concerning the county coroner.

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These provisions, however, do not demonstrate that either the county auditor or the county coroner is an "employee" of the County for purposes of OMA. In *Heller v. County Board of Jackson County*, 71 Ill. App. 3d 31, 37-39 (5th Dist. 1979), the Illinois Appellate Court analyzed whether a county board exceeded its powers by interfering with the operation, control, and management of the county supervisor of assessment, who was an appointed county officer. The court characterized the county board as having both executive and legislative functions in its relationship with county officers, stating:

[The county board] has the power and responsibility to create salary classifications of general applicability for all county offices, elected or appointed, \* \* \* [and] may establish hours of work \* \* \* It cannot, however, adopt organizational charts and job classifications the effect of which is to divest the supervisor of assessments of the duties and functions vested in him by law enacted by the General Assembly nor may the county board perform his duties **or direct the manner in which they shall be performed.** *Heller*, 71 Ill. App. 3d at 38. (Emphasis added.)

The court also expressly rejected the county board's argument that earlier but substantively identical versions of sections 5-1005, 5-1014, and 5-1087 of the Code (55 ILCS 5/5-1005; 5/5-1014; 5/5-1087 (West 2016))<sup>21</sup> gave the county board the power to oversee the day-to-day operations of any county officer. *Heller*, 71 Ill. App. 3d at 38. To the contrary, the court emphasized that the General Assembly clearly intended for the county officer to operate free from interference of the county board by providing the county officer with a specific term of office which only permitted removal for cause after judicial proceedings, and by setting the duties of the county officer in statute. *Heller*, 71 Ill. App. 3d at 37. The court also determined that although the county board may provide advice and consent concerning employees of the county supervisor of assessment, it did not have the authority to hire employees for that office. *Heller*, 71 Ill. App. 3d at 38. Additionally, the court found that while the county board may establish uniform procedures for the purchase of supplies and equipment by county officers, it may not make those purchases for the supervisor's office. *Heller*, 71 Ill. App. 3d at 38-39.

Applying this reasoning to the relevant elected McLean County officials, it is clear that neither the Committee nor the Board has the authority to direct and control the manner in which the work of the county auditor or the county coroner is done. Both the county auditor and coroner have a specific statutory term of office.<sup>22</sup> Both county officers are provided with

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<sup>21</sup>Ill. Rev. Stat. 1975, ch. 34, par. 303; Ill. Rev. Stat. 1975, ch. 34, par. 401; and Ill. Rev. Stat. 1975, ch. 34, par. 429.18.

<sup>22</sup>55 ILCS 5/3-1001; 10 ILCS 5/2A-18 (West 2016).

control over the internal operations of their offices,<sup>23</sup> and both are empowered to hire employees and, generally, to fix the compensation of their deputies and employees, subject to budgetary limitations established by the county board.<sup>24</sup> Additionally, the specific duties of both the county auditor and coroner are set forth in statute,<sup>25</sup> and the Illinois Constitution of 1970 specifically vests county officers, including the auditor and coroner, with the duties, powers, and functions inherited from common law or historical precedent.<sup>26</sup> A county board may assign additional duties to county officers and it may alter those additional duties, but a county board cannot alter the statutory duties that Illinois law imposes specifically.<sup>27</sup> Moreover, in the event of a conflict concerning the assigned duties, State law prevails over county ordinance.<sup>28</sup>

In addition, the Board has no authority to terminate the county auditor or county coroner based upon their performance.<sup>29</sup> In fact, when a statute provides for an elected or appointed officer to hold office for a definite term, that officer can only be removed for cause, which does not apply to the circumstances involved here. *See Macaluso v. West*, 40 Ill. App. 3d 392, 394 (5th Dist. 1976) (finding a county board did not have the authority to suspend or remove a county supervisor of assessments). Further, both county officers are authorized to procure necessary equipment, materials, and supplies to perform the duties of the office, subject to applicable county appropriation ordinances.<sup>30</sup> Although the Board does set the actual compensation for the county officers,<sup>31</sup> salary is only one relevant factor in determining whether

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<sup>23</sup>55 ILCS 5/3-1004 (West 2016); 55 ILCS 5/3-3003 (West 2016).

<sup>24</sup>55 ILCS 5/3-1007; 55 ILCS 5/3-3003; *but see*, 55 ILCS 5/3-3040, (providing that the compensation of a deputy coroner is to be determined by the county board).

<sup>25</sup>55 ILCS 5/3-1005 (West 2016); 55 ILCS 5/3-3003.

<sup>26</sup>Ill. Const. art. VII, §4(d).

<sup>27</sup>55 ILCS 5/5-1087 (West 2016); *see also* Ill. Att'y Gen. Op. No. S-562, issued March 28, 1973, at 3-4 (finding that a county board may alter the county auditor's duties that are not specifically imposed by law.)

<sup>28</sup>55 ILCS 5/5-1087 (West 2016).

<sup>29</sup>The reasons for which an elective office may become vacant does not include other corporate authorities' dissatisfaction with the elected officer's job performance. *See* 10 ILCS 5/25-2 (West 2016); 10 ILCS 5/25-11 (West 2016). Further, section 3-1001 of the Counties Code provides, "[i]n case of a vacancy in the office of county auditor caused by death, resignation, or removal from office, the vacancy shall be filled as provided for filling vacancies of other county offices." *See also* 55 ILCS 5/3-3039 (West 2016) ("Whenever a vacancy occurs in the office of coroner, the vacancy shall be filled as provided in the Election Code.").

<sup>30</sup>55 ILCS 5/3-1004 (West 2016).

<sup>31</sup>*See* 55 ILCS 5/4-6001 (West 2016).

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an employee-employer relationship exists. Considering all of the relevant factors, it is clear that the auditor and coroner hold public office and therefore are not employees of the County within the scope of section 2(c)(1) of OMA.

The Committee's non-confidential response also argued that a finding by this office that the county auditor is not an "employee" of the county as defined by section 2(d) of OMA "would \* \* \* have significant implications to the operations of county government."<sup>32</sup> Citing several statutory provisions, such as section 2 of the Wages of Women and Minors Act (820 ILCS 125/2 (West 2016)),<sup>33</sup> the Committee posited that such a finding may impact the county's obligation to provide protection to the county officers under other statutes if they are not employees of the county.

This binding opinion, however, only addresses whether elected county officials are employees for purposes of OMA. Accordingly, this office is bound by the definitions of "public office" and "employee" contained in section 2(d) of OMA. *Chenoweth*, 2015 IL 116898, ¶21, 25 N.E.3d at 617 (when a statute defines the terms it uses, those terms must be construed according to the definitions contained in the act).

Because the county auditor and county coroner are county officers, not employees, under section 2(d) of OMA, section 2(c)(1) of OMA does not authorize the closed session discussion of their duties and salaries. Therefore, this office concludes that the Committee violated section 2(a) of OMA by discussing, pursuant to section 2(c)(1) of OMA, matters related to county officers during the closed session portion of its June 6, 2018, meeting.

### **Section 2(c)(3) of OMA**

The fact that the Committee did not publicly cite section 2(c)(3) of OMA as its basis for entering closed session at its June 6, 2018, meeting is not disputed. Even if the Committee had cited section 2(c)(3) of OMA, however, the plain language of this exception would have allowed a closed session discussion concerning the performance of the county auditor and county coroner *only if* the Committee possessed the authority to remove these county officials under law or ordinance, which it does not. Therefore, the Committee's closed session

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<sup>32</sup>Letter from Jason Chambers, McLean County State's Attorney, to Shannon Barnaby, Assistant Attorney General (August 10, 2018), at 4.

<sup>33</sup>The Committee also cited section 3(e) of the Toxic Substances Disclosure to Employees Act (820 ILCS 255/3(e) (West 2016)) and section 3 of the Medical Examination of Employees Act (820 ILCS 235/3 (West 2016)).

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discussion concerning the county auditor and county coroner on June 6, 2018, would have been improper even if the Committee had relied on the section 2(c)(3) exception.

### FINDINGS AND CONCLUSIONS

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

- 1) On July 30, 2018, McLean County Auditor Michelle Anderson submitted a Request for Review alleging that during its May 2, 2018, and June 6, 2018, meetings, the Finance Committee of the McLean County Board improperly entered closed session to discuss the duties and salaries of elected county officers pursuant to section 2(c)(1) of OMA. Ms. Anderson also noted that she anticipated that the Committee would violate OMA at its August 1, 2018, meeting.
- 2) On August 1, 2018, the Public Access Bureau sent a copy of the Request for Review to the Board's chairman. The Public Access Bureau requested copies of the open and closed session minutes and the closed session verbatim recording of the June 6, 2018, meeting. This office also requested a written response to the allegations in the Request for Review concerning the June 6, 2018, meeting.
- 3) In a letter dated August 10, 2018, the McLean County State's Attorney, on behalf of the Committee, provided this office with copies of the closed session verbatim recording and open session minutes of the June 6, 2018, meeting, and both a redacted and unredacted written response. The non-confidential response asserted that the Committee properly entered into closed session pursuant to section 2(c)(1) on June 6, 2018, to discuss the performance of certain elected county officials because they were employees of McLean County.
- 4) On August 17, 2018, the Public Access Bureau forwarded a copy of the Committee's redacted response letter to Ms. Anderson. She did not reply.
- 5) On September 25, 2018, this office extended the time within which to issue a binding opinion by 21 business days, to October 30, 2018, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 6) Under section 3.5(a) of OMA, a person may submit a Request for Review more than 60 days after a violation allegedly occurred only if the person did not discover facts concerning the alleged violation within 60 days of the alleged violation despite using reasonable diligence.

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7) Section 3.5(a) of OMA precludes this office from reviewing Ms. Anderson's allegation concerning the Committee's May 2, 2018, closed session discussion because Ms. Anderson neither submitted her Request for Review within 60 days after that meeting nor demonstrated that she did not discover the alleged violation of OMA within those 60 days despite using reasonable diligence.

8) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c) of OMA. Section 2(c)(1) of OMA permits a public body to enter closed session to discuss "[t]he appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body[.]"

9) The Committee entered the June 6, 2018, closed session at issue pursuant to section 2(c)(1). Under the definitions of "public office" and "employee" in section 2(d) of OMA, the county auditor and county coroner hold public offices and therefore are not county employees for purposes of section 2(c)(1) OMA.

10) Further, the County does not have an employer-employee relationship with the county auditor or the county coroner under the usual common law rules. Most notably, the Committee does not have the authority to direct and control the manner in which their work is done or to terminate them from their positions. Therefore, section 2(c)(1) of OMA did not authorize the Committee's closed session discussion of the county officers' duties and salaries.

11) Although not cited by the Committee as a basis for entering closed session on June 6, 2018, section 2(c)(3) of OMA also would not have authorized the closed session discussion because the Committee does not possess the power to remove the county auditor or the county coroner from office.

In accordance with these findings of fact and conclusions of law, the Committee is directed to remedy this violation by disclosing to Ms. Michelle Anderson and making publicly available the verbatim recording of the applicable closed session discussion from the June 6, 2018, meeting. As required by section 3.5(e) of OMA, the Committee 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 2016)).

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law, 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review with the Circuit Court of Cook or Sangamon County within

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35 days of the date of this decision naming the Attorney General of Illinois and Ms. Michelle Anderson as defendants. *See* 5 ILCS 140/11.5 (West 2016).

Sincerely,

LISA MADIGAN  
ATTORNEY GENERAL

By:



Michael J. Luke  
Counsel to the Attorney General

cc: The Honorable John McIntyre  
Board Chairman  
McLean County Board  
115 East Washington Street  
Bloomington, Illinois 61701

**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 18-015) upon:

The Honorable Michelle Anderson  
County Auditor  
McLean County  
2403 Savanna Road  
Bloomington, Illinois 61705  
micglf@yahoo.com

The Honorable Don Knapp  
McLean County State's Attorney  
104 West Front Street, Room 605  
P.O. Box 2400  
Bloomington, Illinois 61702  
stateattorney@mcleancountyil.gov

The Honorable John McIntyre  
Board Chairman  
McLean County Board  
115 East Washington Street  
Bloomington, Illinois 61701  
john.mcintyre@mcleancountyil.gov

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 October 30, 2018.



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Public Access Counselor

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