



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 17, 2019

PUBLIC ACCESS OPINION 19-004
(Request for Review 2019 PAC 56876)

OPEN MEETINGS ACT:
Public Recital of the
Nature of the Matter
Under Consideration Prior to
Taking Final Action

Mr. Jeff Egbert
Pinckneyville Press
111 South Walnut Street
Pinckneyville, Illinois 62274

Mr. Greg Thompson, President
Board of Education of Pinckneyville
High School District 101
600 East Water Street
Pinckneyville, Illinois 62274

Dear Mr. Egbert and Mr. Thompson:

This binding opinion is issued 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 Board of Education (Board) of Pinckneyville Community High School District 101 (District) violated OMA during its January 28, 2019, meeting by failing to provide an adequate public recital of the business being conducted before taking final action on a resolution.

BACKGROUND

On February 18, 2019, the Public Access Bureau received a Request for Review from Mr. Jeff Egbert, on behalf of *Pinckneyville Press*, alleging that during its January 28, 2019,

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meeting, the Board voted on "Resolution 2019-1 authorizing a Notice to Remedy,^[1] but gave no public details of the business being publicly conducted by the board."² Mr. Egbert stated in his Request for Review that "[a]fter [the superintendent was] questioned about the lack of transparency, [the] school superintendent * * * [said] 'we read it in closed session.'"³ Mr. Egbert provided this office with copies of the agenda for the January 28, 2019, meeting, the "Board Meeting Newsletter," which contains a summary of the meeting, and a digital audio recording of that portion of the meeting during which the Board discussed and voted on Resolution No. 2019-1.

On February 28, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the president of the Board, together with a letter asking the Board to, among other things, clarify whether it voted on a motion to approve Resolution No. 2019-1 at its January 28, 2019, meeting. If the Board voted to approve the resolution, the Public Access Bureau requested a description of the information the Board provided to the public regarding the resolution, and an explanation of whether the information provided to the public was sufficient to inform the public of the business being conducted before action was taken. In addition, the Public Access Bureau requested copies of the agenda, minutes, and recordings of the January 28, 2019, meeting, as well as Resolution No. 2019-1, and the Notice to Remedy that underlies the resolution.⁴

On March 4, 2019, counsel for the Board, Mr. Stuart E. Morgenstern, provided a written response on behalf of the Board, copies of the January 28, 2019, meeting agenda, open session and closed session minutes for that meeting, and the verbatim recording of the closed session, as well as copies of Resolution No. 2019-1 and the Notice to Remedy.⁵ Mr. Morgenstern explained that during the January 28, 2019, meeting the Board approved Resolution No. 2019-1, and that "[i]n order to inform the public the resolution number and the title of the

¹A notice to remedy "notifies a teacher that, unless his or her conduct is corrected, he or she may face charges subject to dismissal." *Board of Education of Rockford School District No. 205 v. Illinois Educational Labor Relations Board*, 165 Ill. 2d 80, 91 (1995).

²E-mail from Jeff Egbert, *Pinckneyville Press*, to Public Access [Bureau, Office of the Attorney General] (February 18, 2019).

³E-mail from Jeff Egbert, *Pinckneyville Press* to Public Access [Bureau, Office of the Attorney General] (February 18, 2019).

⁴Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Greg Thompson, President, Board of Education of Pinckneyville Community High School District 101 (February 28, 2019), at 1-2.

⁵Letter from Stuart E. Morgenstern, Morgenstern Law Office, P.C., to Edie Steinberg, Office of the Attorney General, Assistant Attorney General, Public Access Bureau (March 4, 2019).

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resolution were read aloud in open session."⁶ On March 12, 2019, Mr. Egbert contacted this office regarding the status of his Request for Review. Later that same day, this office forwarded a copy of the Board's response letter to Mr. Egbert.⁷ Mr. Egbert did not provide a written reply.

On April 15, 2019, this office properly extended the time within which to issue a binding opinion by 21 business days, to May 20, 2019, pursuant to section 3.5(e) of OMA.⁸

ANALYSIS

The public policy of this State, as declared in section 1 of OMA (5 ILCS 120/1 (West 2016)), is 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 2(e) of OMA (5 ILCS 120/2(e) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) requires that "[f]inal action [at a meeting] * * * be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted."

The issue raised by Mr. Egbert's Request for Review is whether the Board's public announcement at its January 28, 2019, meeting of the "resolution number and the title of the resolution" was a sufficient public recital of the nature of the matter being considered to inform the public of the business being conducted as required by section 2(e) of OMA. The minutes of the January 28, 2019, meeting indicate that the Board provided the following information:

It was moved by Brian Kellerman and seconded by Jennifer Robb to approve Resolution No. 2019-1 authorizing a Notice to Remedy be served to the teacher named therein. Roll call: Lisa Stanton, yes; Greg Thompson, yes; Jennifer Robb, yes; Jeff Suchomski, yes; Brian Kellerman, yes; Greg Bigham, yes; and Kyle Pursell, yes. Motion carried.^[9]

⁶Letter from Stuart E. Morgenstern, Morgenstern Law Office, P.C., to Edie Steinberg, Office of the Attorney General, Assistant Attorney General, Public Access Bureau (March 4, 2019).

⁷Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jeff Egbert, *Pinckneyville-Press* (March 12, 2019).

⁸Letter from Edie Steinberg, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Jeff Egbert, *Pinckneyville Press*, and Stuart E. Morgenstern, Morgenstern Law Office, P.C. (April 15, 2019).

⁹Pinckneyville Community High School District 101 Board of Education, Meeting, January 28, 2019, Minutes 2.

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Additionally, the audio recording of this portion of the meeting establishes the following exchange between the Board and Mr. Egbert:

BOARD PRESIDENT: I would entertain a motion to approve resolution number 2019-1 authorizing a Notice to Remedy to be served on the teacher named therein.

BOARD MEMBER: So moved.

* * *

MR. EGBERT: As a point of order don't you have to disclose what you are voting on?

DISTRICT SUPERINTENDENT: It's Resolution 2019[-1]. Do you want me to read the resolution?

MR. EGBERT: * * * Yeah.

DISTRICT SUPERINTENDENT: We read it in closed session. It is moot.

DISTRICT'S ATTORNEY: I don't know that the resolution has to be read.

* * *

MR. EGBERT: The law says you have to tell the public the business you are conducting.

DISTRICT SUPERINTENDENT: It is a Notice to Remedy.^[10]

In Board of Education of Springfield School District No. 186 v. Attorney General, 2017 IL 120343, ¶64, 77 N.E.3d 625, 636 (2017), the Illinois Supreme Court held that "under section 2(e) of the Open Meetings Act, a public recital must take place at the open meeting

¹⁰Pinckneyville Community High School District 101 Board of Education, Meeting, January 28, 2019, Audio Recording provided to the Public Access Bureau by Mr. Jeff Egbert (on file with author). On April 26, 2019, in a telephone conversation with an Assistant Attorney General in the Public Access Bureau, Mr. Egbert identified the persons speaking in the audio recording.

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before the matter is voted upon; the recital must announce the nature of the matter under consideration, with sufficient detail to identify the particular transaction or issue, but need not provide an explanation of its terms or its significance." In that case, a school board's public recital of a separation agreement with its superintendent consisted of the school board president stating that the board was considering an agenda item for "approval of a resolution regarding the separation agreement[.]" as well as reciting the entire text of the resolution itself.¹¹ *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638. The Court concluded that the school board's public recital was sufficient, stating: "The Board president recited the general nature of the matter under consideration—a separation agreement and release—and specific detail sufficient to identify the particular transaction—the separation agreement was between Dr. Milton and the Board." *Springfield School District*, 2017 IL 120343, ¶83, 77 N.E.3d at 638.

Further, the Court distinguished a decision in which the Illinois Appellate Court concluded that the circuit court improperly dismissed a lawsuit alleging that a park district board violated section 2(e) of OMA by failing to provide a sufficient public recital. *Allen v. Clark County Park District Board of Commissioners*, 2016 IL App (4th) 150963, ¶32-33, 67 N.E.3d 536, 541-42 (2016). As explained by the Court, "[t]he presiding officer of the public body in *Allen* had only "publicly recited the general nature of the two matters being considered: lease rates and revised covenants. He did not, however, provide sufficient other information to inform the public of the specific business being conducted: What type of real or personal property was being leased? What existing covenants were being revised?" *Springfield School District*, 2017 IL 120343, ¶79, 77 N.E.3d at 638; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 13-016, issued September 24, 2013, at 4 (public recital identifying employee to be dismissed from public service as "Employee A" violated section 2(e) of OMA because "the public was deprived of any meaningful information concerning the practical effect of the Board's decision. * * * [W]ithout being informed of the identity of the employee who was the subject of the action the public could not determine whether the Board was dismissing a support staff, a teacher, a principal, or the superintendent of the District.").

In the current matter, the minutes and audio recording of the Board's January 28, 2019, meeting document that the Board informed the public at its January 28, 2019, meeting that it was taking final action on Resolution No. 2019-1, a resolution authorizing a Notice to Remedy

¹¹The resolution provided:

"The Board President recommends that the Board of Education of Springfield School District No. 186 vote to approve the separation agreement and release between Dr. Walter Milton, Jr., and the Board of Education." *Springfield School District*, 2017 IL 120343, ¶81, 77 N.E.3d at 638.

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to be served on a teacher. The Board did not, however, identify the teacher to be served. Although the Board was not required to read the entire text of the resolution or to announce the specific details provided in the Notice to Remedy before voting on the resolution, section 2(e) of OMA did require the Board to provide enough information to identify the particular transaction. The public is entitled to information regarding the performance of public employees, especially when their performance warrants a Notice to Remedy and involves conduct that, if not corrected, may result in discipline or dismissal. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 13-016 at 5. Because the District has numerous teachers in its employ, a public recital stating that the Board would take action on a resolution authorizing a Notice to Remedy to be served on an unidentified teacher did not provide sufficient detail to identify a particular transaction. Accordingly, this office concludes that, in violation of section 2(e), the Board did not adequately "inform the public of the business being conducted[]" before voting on the resolution.

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 January 28, 2019, the Pinckneyville Community High School District 101 Board of Education held a regular meeting. During the meeting, the Board voted to adopt Resolution No. 2019-1, authorizing a Notice to Remedy. Prior to voting to adopt the resolution, the Board read aloud only the resolution number and the title of the resolution.

2) On February 18, 2019, Mr. Jeff Egbert, on behalf of *Pinckneyville Press*, submitted a Request for Review to the Public Access Counselor alleging that at the January 28, 2019, meeting, the Board did not provide a public recital that sufficiently informed the public of the business being conducted before voting to approve Resolution No. 2019-1, authorizing a Notice to Remedy. Mr. Egbert'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 2016)).

3) On February 28, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the president of the Board. The Public Access Bureau requested that the Board provide a detailed written response to the allegations raised by Mr. Egbert's Request for Review. The Public Access Bureau also requested copies of the agenda, minutes, and recordings of the January 28, 2019, meeting, as well as Resolution No. 2019-1, and the pertinent Notice to Remedy.

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4) On March 4, 2019, Mr. Stuart E. Morgenstern, counsel for the Board, provided a written response to the Public Access Bureau. The response also included copies of the agenda, minutes of the meeting's open and closed sessions, the audio recording of the closed session discussion, Resolution No. 2019-1, and the Notice to Remedy. On March 12, 2019, the Public Access Bureau forwarded a copy of the Board's written response to Mr. Egbert; he did not reply.

5) On April 15, 2019, this office properly extended the time within which to issue a binding opinion by 21 business days, to May 20, 2019, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 2(e) of OMA provides that "[f]inal action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." To adequately inform the public of the business being conducted, a public body's public recital must include sufficient detail to identify the particular transaction that is the subject of final action. It is undisputed that on January 28, 2019, the Board did not provide a public recital identifying the employee to be issued the Notice to Remedy before the Board voted to adopt the resolution authorizing that Notice to Remedy.

7) Because the Board did not identify the employee to whom the Notice to Remedy was to be issued, the Board failed to provide sufficient detail to identify the particular transaction. Consequently, the Board did not adequately inform the public of the nature of the business it was conducting before taking final action on the resolution, as required by section 2(e) of OMA.

Therefore, it is the opinion of the Attorney General that the Pinckneyville Community High School District 101 Board of Education violated the Open Meetings Act. In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by reconsidering and re-voting on Resolution No. 2019-1, the Notice to Remedy previously addressed on January 28, 2019. Before voting, the Board must provide at least 48 hours' notice of the intended action on a properly posted agenda and provide a public recital of the nature of the matter being considered and the business being conducted with sufficient detail for the public to be able to identify the particular transaction, including reciting the name of the teacher being served the Notice of Remedy.

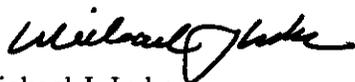
This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review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

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within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Jeff Egbert as defendants. *See* 5 ILCS 120/7.5 (West 2016).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

cc: Mr. Keith Hagene, Superintendent
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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 19-004) upon:

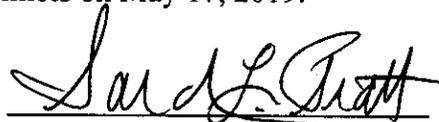
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on May 17, 2019.


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