OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

February 1, 2019

Via electronic mail
[redacted]

Via electronic mail
Mr. David J. Kurlinkus
Chief of Staff and Civil Bureau
Winnebago County State's Attorney's Office
400 West State Street, Suite 619
Rockford, Illinois 61101
statesattorney@co.winnebago.il.us

RE: OMA Request for Review – 2018 PAC 54370

Dea[redacted] and Mr. Kurlinkus:

This determination letter 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 that follow, the Public Access Bureau concludes that the Winnebago County (County) Board of Trustees' (Board) approval of its June 28, 2018, meeting minutes did not violate the requirements of OMA.

BACKGROUND

On August 7, 2018, [redacted] submitted a Request for Review to the Public Access Bureau alleging that the minutes of the Board's June 28, 2018, meeting did not adequately describe the changes implemented by an ordinance that was approved at the meeting. On August 25, 2018, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda and minutes of its June 28, 2018, meeting, together with a written response t[redacted] complaint concerning the adequacy of the minutes. On August 28, 2018, this office received from the Winnebago County State's Attorney's Office the requested materials, together with copies of the ordinance at issue and a section from the Board's rules of order. On September 4, 2018, this office forwarded a copy of

the Board's response to [redacted] On October 7, 2018, she e-mailed this office arguing that the full text of an ordinance should be disclosed to the public before any meeting in which it is considered by the Board or any of its committees.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

As an initial matter, no provision of OMA requires a public body to post the full text of an ordinance prior to a meeting in which the public body considers and/or takes final action on the ordinance. Further, no provision of OMA requires a public body to publicly post the board packet provided to members of the public body. Rather, section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) merely 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." (Emphasis added.) Thus, although providing the public with the full text of an ordinance in advance of a meeting would inform the public of the details of an action the public body is considering taking, a public body is not required to do so.

As to the sufficiency of the Board's June 28, 2018, meeting minutes, section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2016)) provides:

> All public bodies shall keep written minutes of all their meetings, whether open or closed, and a verbatim record of all their closed meetings in the form of an audio or video recording.[1] Minutes shall include, but need not be limited to:
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> * * *
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> (3) *a summary of discussion on all matters proposed, deliberated, or decided, and a record of any votes taken.* (Emphasis added.)

[1]Although [redacted] complained that the Board had not posted a video of its June 28, 2018, meeting, no provision of OMA requires a public body to make or post a video recording of the open portion of a meeting. A public body is required to record only its closed sessions, and it may keep those recordings confidential. 5 ILCS 120/2.06(e) (West 2016).

The plain language of section 2.06(a)(3) of OMA requires only that minutes *summarize* the discussion regarding matters proposed, deliberated, or decided.

> The Board's June 28, 2018, meeting minutes state, in pertinent part:
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> 31. Board Member Fiduccia read in for the first reading of an Ordinance Amending Chapter 14 of the Winnebago County Code (Animal Services Administrator Definition) to be Laid Over. Board Member Boomer made a motion to suspend the rules, seconded by Board Member Webster. Motion was approved by a voice vote. (Board Member Booker and Schultz were absent.) Board Member Fiduccia made a motion to approve the Ordinance, seconded by Tassoni. Motion was approved by a unanimous vote of all members present.[2]

In its response to this office, the Board correctly asserted that no provision of OMA required it to include the text of the ordinance in the meeting minutes. The Board also noted that the text of the ordinance had since been posted on the County's website as part of the Board packet.

The Board's June 28, 2018, meeting minutes reflect that the Board read in the ordinance concerning the definition of the Animal Services Administrator position, suspended the rules, and voted to approve the ordinance. Although [redacted] contended that the minutes do not describe the changes made by the ordinance, OMA requires that meeting minutes summarize only a public body's *discussions* concerning an ordinance it has approved; OMA does not otherwise require meeting minutes to recite the contents of such an ordinance. This office has not received information indicating that the Board discussed in detail the changes to be made by the ordinance before voting on the matter. To the contrary, the video recording of the open session of the meeting, posted on the County's website, reveals no significant back-and-forth discussion of the contents of the ordinance.[3] Board member Dave Fiduccia introduced the ordinance, briefly stating that it would change the definition of "Animal Services Administrator" in the County Code to provide that the employee holding the position need not be a licensed veterinarian.[4] After the motion to suspend the rules was seconded, Board Chairman Frank

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[2]Winnebago County Board, Meeting, June 28, 2018, Minutes 6.

[3]WinCoStream, County Board Meeting 6/28/18, Ustream, http://www.ustream.tv/recorded/115834351 (last visited December 27, 2018).

[4]WinCoStream, County Board Meeting 6/28/18, Ustream, http://www.ustream.tv/recorded/115834351, at 1:00:17 (last visited December 27, 2018).

Haney explained his understanding that there was no State statutory requirement for an animal services administrator to be a licensed veterinarian and asked a colleague whether that was correct; she replied that although there needs to be a veterinarian on staff to provide medical advice under State law, the animal services administrator does not need to be a veterinarian.[5] The Board proceeded to pass the motion to suspend the rules, and Chairman Haney asked whether the Board wished to discuss the ordinance; no member of the Board spoke up, and the ordinance passed.[6] Although simply adding the substance of the change (removing the requirement that the position be held by a licensed veterinarian) would substantially improve the quality of the meeting minutes, the Board did not hold a substantive discussion concerning the change made by the ordinance. Therefore, the Board's June 28, 2018, meeting minutes do not violate section 2.06(a) of OMA. This office, however, encourages the Board to keep detailed minutes concerning the actions it takes during meetings in order to keep the public informed as to the conduct of its business.

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

Very truly yours,

[redacted]

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Assistant Attorney General
Public Access Bureau

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[5]WinCoStream, County Board Meeting 6/28/18, Ustream, http://www.ustream.tv/recorded/115834351, at 1:01:19 (last visited December 27, 2018).

[6]WinCoStream, County Board Meeting 6/28/18, Ustream, http://www.ustream.tv/recorded/115834351, at 1:01:58 (last visited December 27, 2018).