



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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March 4, 2022

Via electronic mail

Mr. James Sinclair
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The Honorable David Goins
Mayor
City of Alton
101 East Third Street
Alton, Illinois 62002

RE: OMA Request for Review – 2018 PAC 55664

Dear Mr. Sinclair and Mr. Goins:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

On November 9, 2018, Mr. James Sinclair submitted a Request for Review to the Public Access Bureau alleging that the City of Alton (City) City Council (City Council) violated the Open Meetings Act (OMA) (5 ILCS 120/1 *et seq.* (West 2018)) during its September 12, 2018, meeting. Mr. Sinclair asserted that the City Council voted to approve two ordinances concerning the annexation of certain properties that were not sufficiently identified on the agenda.¹ On November 19, 2018, this office forwarded a copy of Mr. Sinclair's Request for

¹Mr. Sinclair's Request for Review also asked this office to review the form that the City Council provides individuals who wish to provide public comment to determine whether that form complies with section 2.06(g) of OMA (5 ILCS/120/2.06(g) (West 2018)). His Request for Review, however, did not allege a specific instance in which he or any other member of the public were prohibited from addressing City Council members in violation of section 2.06(g) of OMA. Without an allegation that a public body's practices concerning public comment were applied in a manner that violated OMA, this office will not undertake a review of those practices. *See, for example*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 47990, issued June 5, 2017.

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Review to the City Council and asked it to provide a written response to this allegation. On January 9, 2019, outside counsel for the City responded on behalf of the City Council; Mr. Sinclair replied to that response on January 18, 2019.

The September 12, 2018, agenda item for the ordinances in question stated "Comments or Resolutions from the City Council."² The City Council's answer to this office acknowledged that the agenda did not provide advance notice that it would consider these ordinances during its September 12, 2018, meeting. Accordingly, it is undisputed that a member of the public reading the agenda in advance of the Board's September 12, 2018, meeting, would not have had sufficient notice that the City Council planned to vote on the ordinances at issue. The City Council, however, contended that the votes on those ordinances during the September 12, 2018, meeting did not constitute "final action." The City Council argued the "votes were taken * * * under the suspension of the rules provisions of the local rules of the * * * City Council [and] [s]uch votes do not constitute legal final actions of the City Council because they are in fact not allowed to be final actions by the provisions of [OMA]."³ The City Council's response indicated that the agenda for its September 26, 2018, meeting, described the actions that were taken "under suspension of the rules" during the prior meeting. The City Council argued that, "[u]ntil and unless the required affirmative vote is obtained for the approval of those specific action items, they are not lawfully approved by final action of the City Council."⁴

In his reply, Mr. Sinclair argued, among other things, that the City Council cannot suspend its own rules when doing so would frustrate the requirements of OMA.

Section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2018)) requires an agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting." OMA does not define "final action," and no Illinois court has precisely defined that term. However, based on the guidance provided by Illinois courts analyzing this subject matter,⁵ this office has previously determined that an action taken that is a

²Alton City Council, Agenda Item 14, Comments or Resolutions from the City Council (September 12, 2018).

³E-mail from James E. Schrempf, Schrempf, Kelly & Napp Ltd., to Shannon [Barnaby], [Assistant Attorney General], [Public Access Bureau] (January 9, 2019).

⁴E-mail from James E. Schrempf, Schrempf, Kelly & Napp Ltd., to Shannon [Barnaby], [Assistant Attorney General], [Public Access Bureau] (January 9, 2019).

⁵*See, for example, Gosnell v. Hogan*, 179 Ill. App. 3d 161 (5th Dist. 1989) (board's authorization of mediation was merely a step towards reaching final action on the secretaries' union's contract); *Kosoglad v. Porcelli*, 132 Ill. App. 3d 1081, 1092 (1st Dist. 1985) (vote to remove commissioner from police board in open

merely a step in a public body's process for reaching final action on an issue does not constitute "final action," but a vote that resolves a matter does. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 32463, issued July 14, 2015, at 3 (directing staff to explore funding for a sporting event bid in open session was a "step in furtherance of reaching final action, rather than final action itself"); *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 55599, issued August 7, 2019, at 2-4 (vote in open session to certify candidates for appointment to the position of deputy sheriff was final action).

The minutes from the City Council's September 12, 2018, meeting, show that the City Council took the following action:

Amended Ordinance No. 7665. An Ordinance approving an Annexation Agreement between the City of Alton and Larry Manns. Mr. Boulds made, a motion, seconded by Ms. Smith, that said ordinance as amended be adopted. The motion passed * * *

* * *

WHEREAS, the City Council of the City of Alton, Illinois has approved a[n] Annexation Agreement between the City of Alton and Larry Manns pursuant to all appropriate and legally required notices, including a public hearing, concerning approximately 286 acres as more specifically identified in said Agreement.^[6]

Likewise, with Ordinance No. 7666, the minutes demonstrate that the City Council voted to approve an "Ordinance annexing certain territory to the City of Alton, Madison County, Illinois."⁷

Further, the ordinances both provide that, "[t]his Ordinance shall be in full force and effect following its passage, [and] approval" and show that the ordinances were "[p]assed by

session was final action); *Davis v. Board of Education of Farmer City – Mansfield Community Unit School District No. 17*, 63 Ill. App. 3d 495, 499 (4th Dist. 1978) (adoption of resolution in closed session stating tentative intent to terminate superintendent's employment "did not dispose of the question of whether that employment should be terminated and, therefore, was not final action[.]" where board subsequently took final action to terminate the superintendent's employment in open session).

⁶Alton City Council, Meeting, September 12, 2018, Minutes 19-20.

⁷Alton City Council, Meeting, September 12, 2018, Minutes 20.

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the City Council of the City of Alton this 12th day of September, 2018. Approved by the Mayor of the City of Alton this 13th day of September, 2018."⁸ Lastly, the annexation agreement attached to Ordinance No. 7665 states it was "made and entered into this 12th day of September, 2018[.]"⁹

Under these circumstances, it is clear that the action taken by the City Council on the two ordinances during its September 12, 2018, meeting was the ultimate decision that authorized the City to enter into the agreements annexing the relevant properties, rather an interim step. The City Council's argument that the final action—the City Council voting to ratify "actions taken under suspension of rules at prior meeting"¹⁰—did not take place until its subsequent meeting on September 26, 2018, is not supported by the plain language contained within the documents. Instead, the documents demonstrate that the passage of the ordinances in question during the September 12, 2018, meeting bound the City to the future courses of action described within the annexation agreements. This was not a matter of merely reaching a tentative consensus as a preliminary step to final approval. Because the City Council implemented the ordinances by approving them at the September 12, 2018, meeting, those votes constituted final actions subject to the advance notice requirements of section 2.02 of OMA.

Lastly, the City Council argued that the votes during the September 12, 2018, meeting did not violate OMA because it has discretion to suspend its rules under the City's Code of Ordinances. Relying on those local rules, the City Council argues that the votes taken on September 12, 2018, were not "legal final actions" until the ordinances were approved at the September 26, 2018, meeting, despite the fact that the ordinances themselves state they were already in effect prior to the September 26, 2018, meeting. This office, however, has previously determined that a public body's suspension of its own rules to approve an item does not relieve it of its obligation under section 2.02(c) of OMA to describe the general subject matter of the items on its agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51069, issued March 6, 2018. In that matter, a city council listed on its agenda a proposed ordinance, but specifically labeled the item as "first read," which signaled that the city council would only take a preliminary, procedural step on the ordinance at that meeting. The city council argued to this office that the adoption of the ordinance was proper because it had properly suspended its rules, which generally required the city council to vote on a proposed ordinance at a meeting subsequent to the meeting at which the

⁸City of Alton Ordinance No. 7665 (approved September 12, 2018); City of Alton Ordinance No. 7666 (approved September 12, 2018).

⁹Annexation Agreement between the City of Alton and Larry Manns, September 12, 2018, at 1.

¹⁰E-mail from James E. Schrempf, Schrempf, Kelly & Napp Ltd., to Shannon [Barnaby], [Assistant Attorney General], [Public Access Bureau] (January 9, 2019).

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ordinance is first read, because the city council also had a rule allowing it to suspend its rules by a vote of two-thirds. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 51069, issued March 6, 2018, at 3. The Public Access Bureau rejected the city council's argument that its action to suspend its own rules outlining the process for adopting ordinances authorized it to take final action on an ordinance listed on the agenda only as "first read:"

Construing section 2.02(c) of OMA as permitting public bodies to vote on matters that are identified on meeting agendas as merely procedural motions that precede final action **would be contrary to the General Assembly intent of ensuring that agendas notify the public of all matters that public bodies will be acting upon.**^[11]

While that city council may have been able to suspend its rules to approve that ordinance despite it being the first time the ordinance was discussed at a meeting, its authority to suspend its own procedures rules did not give it the authority to avoid the requirements of section 2.02(c) of OMA. Here, the City Council's rule that purports to allow the City Council to suspend the requirements of section 2.02(c) of OMA is in direct conflict with the General Assembly's intent that a member of the public reading an agenda in advance of a meeting would have sufficient notice concerning what the public body planned to vote on at that meeting.

Further, the General Assembly has expressly limited the exercise of home rule powers in OMA. Section 6 of OMA (5 ILCS 120/6 (West 2020)) provides, "[t]he provisions of this Act constitute minimum requirements for home rule units; any home rule unit may enact an ordinance prescribing more stringent requirements binding upon itself which would serve to give further notice to the public and facilitate public access to meetings." Therefore, even though the City is a home rule municipality,¹² it may not pass an ordinance through the exercise of its home rule powers that supplants or supersedes the provisions of OMA. *See Palm v. 2800 Lake Shore Drive Condominium Ass'n*, 2013 IL 110505, ¶ 32 (2013), 988 N.E.2d 75, 81 (2013) (stating a home rule ordinance is a valid exercise of home rule power if it relates to the home rule unit's "government and affairs" and the legislature has not expressly preempted the exercise of home rule powers on that subject).

Accordingly, this office concludes that the City Council violated section 2.02(c) of OMA by voting to approve two ordinances that were not sufficiently identified on the agenda for its September 12, 2018, meeting.

¹¹Ill. Att'y Gen. PAC Req. Rev. Ltr. 51069, issued March 6, 2018, at 3-4. (Emphasis added).

¹²Illinois Municipal League, Home Rule Municipalities, <http://www.iml.org/page.cfm?key=2> (last visited March 3, 2022).

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This office's review of the September 26, 2018, agenda and meetings minutes confirms that the City Council included the relevant ordinances on that agenda before re-voting on the issue. Therefore, the City Council need not take additional remedial action with respect to the ordinances at issue in this Request for Review. This office, however, reminds the City Council of its obligation to ensure that all future agendas meet the requirement of section 2.02(c) that each agenda provide sufficient advance notice to the public of the general subject matter of the items on which it intends to take action at that meeting. The City Council may not circumvent this express requirement by suspending its rules and voting to approve ordinances for which advance notice is not provided, and then ratifying those ordinances at future meetings after they have been implemented and taken effect. This office encourages the City Council to update its ordinances as necessary to ensure that its practices at meetings conform with section 2.02(c) and all other requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at Shannon.Barnaby@ilag.gov

Very truly yours,



SHANNON BARNABY
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Public Access Bureau

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