



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

February 14, 2022

Via electronic mail

[REDACTED]

Via electronic mail

[REDACTED]

Via electronic mail

Mr. John E. Fester
Himes Petrarca & Fester
OBO Peotone Community Unit School District No. 207U
Board of Education
180 North Stetson, Suite 3100
Chicago, Illinois 60601
jfester@edlawyer.com

RE: OMA Requests for Review – 2021 PAC C-0509; 68340

Dear [REDACTED] and Mr. Fester:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). This determination consolidates two Requests for Review concerning similar allegations. For the reasons that follow, the Public Access Bureau concludes, under the specific circumstances in question, that the Peotone Community Unit School District No. 207U (District) Board of Education (Board) did not improperly hold an emergency meeting on October 8, 2021.

On October 14, 2021, the Public Access Bureau received a Request for Review from [REDACTED] alleging that the Board failed to provide 48 hours' notice for its October 8, 2021, special meeting. On November 1, 2021, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging, in relevant part, similar allegations concerning the Board's October 8, 2021, special meeting. This office sent copies of the Requests for Review to

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the Board and asked it to provide a written response to those allegations, together with copies of the notice, agenda, minutes (both open and closed), and any recordings from the meeting in question. On December 7, 2021, the Board furnished copies of the requested documents, together with its written response. On December 13, 2021, [REDACTED] submitted a reply reiterating his contention that the circumstances underlying the subject matter of the Board's October 8, 2021, special meeting did not constitute a bona fide emergency. [REDACTED] did not submit a reply.

DETERMINATION

As an initial matter, [REDACTED] has also alleged that Board members violated numerous provisions of its Code of Conduct. However, the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2020)). *See* 15 ILCS 205/7(c)(3) (West 2020). Accordingly, this office is not authorized to review alleged violations of the Board's rules governing members' conduct.

OMA provides that it is the "public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in anyway." 5 ILCS 120/1 (West 2020). Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2020)) provides that "[p]ublic notice of any special meeting **except a meeting held in the event of a bona fide emergency**, or of any rescheduled regular meeting, or of any reconvened meeting, shall be given at least 48 hours before such meeting[.]" (Emphasis added.)

OMA does not define the phrase "bona fide emergency," and no Illinois appellate court has addressed the issue of what constitutes a *bona fide* emergency for purposes of section 2.02(a). An "emergency" is defined as "an **unforeseen** combination of circumstances or the resulting state that calls for **immediate** action."¹ (Emphasis added.) Based on this definition, the Public Access Bureau has previously determined that "unanticipated circumstances requiring immediate action that would justify providing less than 48 hours' notice[]" are necessary for a meeting to qualify as one held in the event of a *bona fide* emergency. Ill. Att'y Gen. PAC Req. Rev. Ltr. 23656, issued May 31, 2013, at 4. In that matter, this office rejected a public body's assertion that an account deficit that could have resulted in the public body failing to meet payroll constituted a "bona fide emergency" under section 2.02(a), partly because the "situation that precipitated" the meeting "was clearly foreseeable." Ill. Att'y Gen. PAC Req. Rev. Ltr. 23656, at 4; *see also River Road Neighborhood Ass'n v. South Texas Sports*, 720 S.W.2d 551, 557 (Tex. App. 1986) ("The mere necessity for quick action does not constitute an emergency

¹WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY, 741 (1993).

where the situation calling for such action is one which reasonably should have been anticipated.").

In its response to this office, the Board explained the agenda for the October 8, 2021, meeting identified the meeting as a special meeting without indicating that it was an emergency meeting. The Board acknowledged that less than 48 hours of advance notice was provided for the meeting, but asserted that the underlying circumstances constituted a bona fide emergency because the Board faced an imminent deadline for approving an application to the Illinois State Board of Education (ISBE) for a \$50,000 matching grant for a tile floor abatement project:

The Board of Education was first alerted to the need for Board approval of the ISBE grant application less than 48 hours before the application needed to be submitted. The Board had no reason to know that its approval was required prior to being notified late on October 6, as the Board of Education is not directly involved in preparing and filing grant applications. While it can be argued that CSBO Moore should have become more familiar with the grant application requirements, his actions or inactions cannot be imputed to the Board. The relevant question is, did the Board know or should the Board have known of the requirement for Board action in time to provide the standard 48 hours' advance notice of a meeting? The answer to each question is no.

An "emergency" is defined as: "an unforeseen combination of circumstances or the resulting state that calls for immediate action" (Merriam-Webster.com, accessed 12/07/21). This situation meets this definition. The Board was unaware of a looming deadline to take action to approve the grant application. Had the Board been made aware in advance of the need to take formal action on the application, it could have done so at its September 20th regular meeting or called a special meeting with 48 hours' notice. However, the circumstances in this situation required immediate action in order to secure \$50,000 from ISBE that would otherwise have to be paid by District 207 taxpayers and giving 48 hours' notice would have mooted the need for any meeting as the application window would have closed hours before the Board could meet.

This was not an emergency of the Board's making. The Board was first alerted to the grant application problem at a juncture when giving 48 hours' notice of a meeting was not possible if the grant application was to be submitted on time. The Board gave as much notice of the meeting as practicable and took extra steps to ensure the meeting was publicized as widely as possible and added a livestream of the meeting for people who may not have been able to adjust their schedules to attend in-person. The local media was alerted to the meeting, which lasted all of five minutes and was limited to taking action to approve the grant application.^[2]

As an initial matter, it has not been disputed that the Board, upon learning of the impending grant application deadline requiring Board approval, not only took the appropriate steps to comply with the emergency notice provisions of section 2.02(a) of OMA³ but also took extra measures to notify the public of the upcoming meeting and provide access. For example, the Board posted copies of the notice and agenda at its physical meeting space, on the District website, and on the District's various social media pages. Additionally, the Board promptly notified local news media and also provided a live stream of the meeting in question. Accordingly, the only issue under review is whether the Board held the October 8, 2021, special meeting as a result of a bona fide emergency.

It is apparent that approval of the grant application in question required "immediate action" because less than 48 hours remained between (1) the application's deadline for submission and (2) the District business officer first alerting the Board of the circumstances at hand on October 6, 2021. Considering this narrow timeline, the Board did not unreasonably assert that it needed to convene an emergency meeting. Nothing in the record suggests that the need for the Board to take action prior to the impending deadline for the grant application was "clearly foreseeable" to the Board. This office has received no evidence that the Board convened the meeting on an emergency basis in an attempt to circumvent the transparency requirements of OMA. Nor has it been alleged that the District business officer was actually aware of the need for Board action to approve the grant application and intentionally failed to notify the Board earlier, or that Board review of grant applications is so common that the District's business

²Letter from John E. Fester to Suzanne Dennis Borland, Assistant Attorney General, Public Access Bureau, and Christopher Boggs, Assistant Attorney General, Public Access Bureau (December 7, 2021).

³Section 2.02(a) of OMA provides, in pertinent part: "Notice of an emergency meeting shall be given as soon as practicable, but in any event prior to the holding of such meeting, to any news medium which has filed an annual request for notice under subsection (b) of this Section."

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officer should have anticipated needing the Board's involvement. Under these specific circumstances, where the Board's options were to hold an emergency meeting to approve the grant application or forego pursuing the \$50,000 matching grant from ISBE, this office is unable to conclude that the Board violated the advance notice requirements of OMA in connection with its October 8, 2021, special meeting. However, when exigent circumstances justify an emergency meeting, this office recommends that the public body holding the meeting indicate on the meeting agenda that the meeting is a special meeting held in the event of a bona fide emergency. At the time they submitted their Requests for Review, it appears that [REDACTED] and [REDACTED] may not have been aware that the Board held the October 6, 2021, meeting on an emergency basis.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. If you have any question, please contact me at Christopher.Boggs@ilag.gov. This letter serves to close these matters.

Very truly yours,

[REDACTED]
CHRISTOPHER R. BOGGS
Supervising Attorney
Public Access Bureau

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