OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 20, 2022

Via electronic mail
[redacted]

Via electronic mail
The Honorable Nathaniel George Booker
Mayor
Village of Maywood
40 Madison Street
Maywood, Illinois 60153
nbooker@maywood-il.org

RE: OMA Request for Review – 2022 PAC 72176

Dear [redacted] and Mr. Booker:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that the Village of Maywood's Board of Trustees (Board) violated OMA in connection with its June 4, 2022, emergency meeting.

BACKGROUND

In a Request for Review received by this office on June 8, 2022, [redacted] alleged that that the Board did not have a valid basis for holding an emergency meeting on June 4, 2022. She also alleged that the Board did not provide advance notice of the June 4, 2022, emergency meeting. On June 14, 2022, this office sent a copy of the Request for Review to the Board and requested that it provide a detailed legal and factual explanation of the *bona fide* emergency that necessitated the June 4, 2022, emergency meeting. This office also asked when the Board determined that an emergency meeting needed to take place and to describe how the Board notified members of the public of the emergency meeting. This office

requested copies of the notice, agenda, and open and closed session minutes, and open session recording for the June 4, 2022, emergency meeting. On June 23, 2022, the Board's legal counsel provided a written response on behalf of the Board and the requested materials. On June 27, 2022, this office forwarded the Board's written response to [redacted]; she replied on July 2, 2022.

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).

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

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

In its response to this office, the Board argued that it needed to hold the Saturday, June 4, 2022, emergency meeting to vote on a replacement for its suspended Village Manager. The Board explained that on Thursday, June 2, 2022, it held a special meeting at 8:05 p.m. to consider the employment status of its Village Manager, during which it entered closed session to "review and discuss the investigative report regarding occurrences of [the Village Manager's] workplace misconduct[.]"[2] After coming out of closed session at 1:16 a.m. on Friday, June 3, 2022, the Board voted to suspend the Village Manager. In its written answer in this matter, the Board asserted that "it was imperative that [it] immediately schedule an emergency meeting to appoint a person to act as Interim Village Manager" because of the essential role a village manager plays in the daily Village operations.[3] The Board explained that "[t]he Village Manager is generally responsible for enforcement of all laws and ordinances within the municipality; management of municipal departments including the appointment and/or removal of all directors; and attending and participating in all Board of Trustee meetings."[4] The Board further contended that "a constant executive presence is necessary to provide authority" in the case of a Village emergency.[5] The Board stated that "[h]ad [it] declined to hold the Emergency Meeting on June 4, 2022, the Board would remain without a Village executive until at least June 21, 2022, the next regularly scheduled Board" meeting.[6]

The Board explained that it posted the notice and agenda for the 10:00 a.m. June 4, 2022, emergency meeting on June 3, 2022, at the Village Hall and on the Village website calendar. The Board provided a screenshot of the history of changes made to the June 4, 2022, meeting agenda on the BoardBook online platform, showing that at 11:06 a.m. on June 3, 2022, the June 4, 2022, meeting was created. The history reflects that edits were made to the agenda periodically throughout the day until June 3, 2022, at 2:03 p.m. The Board also provided an e-mail sent at 3:00 p.m. on June 3, 2022, confirming that the physical copy of the agenda was posted. The Board argued that notice was provided as quickly as practicable given how late the special meeting had ended that morning.

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[2]Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein Thorpe and Jenkins, LTD, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 23, 2022), at 1.

[3]Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein Thorpe and Jenkins, LTD, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 23, 2022), at 2.

[4]Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein Thorpe and Jenkins, LTD, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 23, 2022), at 2.

[5]Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein Thorpe and Jenkins, LTD, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 23, 2022), at 2.

[6]Letter from Mallory A. Milluzzi, Assistant Village Attorney, Klein Thorpe and Jenkins, LTD, to Laura S. Harter, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General (June 23, 2022), at 2.

In her reply, [redacted] asserted that the suspension of the Village Manager was foreseeable. She contended that "[i]t had been apparent for months now that the mayor and the village manager had reached irreconcilable differences."[7] She further questioned why the Board did not go into the June 2, 2022, special meeting with a plan to replace the Village Manager.

It is not apparent to this office that the appointment of an interim Village Manager was an unforeseen circumstance that required immediate action on Saturday, June 4, 2022. While the Board did not know for certain that it would vote to suspend the Village Manager at its June 2, 2022, special meeting, it had foreseen that it might need to take action on her employment, as demonstrated by the June 2, 2022, agenda item "Consideration of Village Manager's Employment status."[8] It was logically foreseeable that if the Board voted to terminate or suspend the Village Manager, it would need to appoint a replacement at the same time; therefore, the Board should have included an agenda item on its June 2, 2022, special meeting agenda to consider the appointment of an interim Village Manager.[9] Although the Board emphasized the importance of having a Village Manager in place to manage the daily operations of the Village, it did not point to any specific circumstances occurring on the weekend of June 4-5, 2022, that required the appointment of an interim executive on Saturday morning. Contrary to the Board's contention, it would not have had to wait until its next regularly scheduled Board meeting on June 21, 2022, to appoint an interim Village Manager; it could have called a special meeting for Sunday, June 5, 2022, to be held 48 hours after it posted the agenda on June 3, 2022. Because the Board did not provide this office with facts supporting that a *bona fide* emergency existed that warranted holding a meeting with less than 48 hours' advance notice of the proposed final action, this office concludes that the Board violated section 2.02(a) of OMA. Because remedial action is not feasible at this time, this office requests that the Board comply with the notice provisions of OMA in the future.

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[7]E-mail from [redacted] to [Laura Harter] (July 2, 2022).

[8]President and Board of Trustees, Village of Maywood, Special Meeting, Agenda Item 8.A., Consideration of Village Manager's Employment status (June 2, 2022).

[9]This office recognizes that the June 2, 2022, special meeting ran very late, but had the Board included an agenda item to consider the appointment of an interim village manager on its June 2, 2022, special meeting agenda, it could have reconvened the special meeting within 24 hours to finish any business that it could not complete due to the late hour. 5 ILCS 120/2.02(a) (West 2020) ("The requirement of public notice of reconvened meetings does not apply to any case where the meeting was open to the public and (1) it is to be reconvened within 24 hours, or (2) an announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.").

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

Very truly yours,

[redacted]

LAURA S. HARTER
Deputy Bureau Chief
Public Access Bureau

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cc: *Via electronic mail*
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