



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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May 14, 2012

Mr. Patrick J. Murphy, Supervisor
Belvidere Township
8200 Fairgrounds Road
Belvidere, Illinois 61008

Mr. Michael S. Drella, City Attorney
City of Belvidere
Belvidere City Hall
401 Whitney Blvd.
Belvidere, Illinois 61008

RE: OMA Request for Review – 2012 PAC 18885

Dear Mr. Murphy and Mr. Drella:

Pursuant to section 3.5 of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2010)), we have received a Request for Review in which Mr. Patrick J. Murphy, Supervisor of Belvidere Township, alleges that the Belvidere City Council violated OMA at its February 27, 2012, Committee of the Whole¹ meeting by voting on a matter that did not appear on the meeting agenda. We have considered the City's response to the allegations in the Request for Review as well as the Township's reply. We also have reviewed the meeting agenda, minutes, and other documentation submitted by the parties.

Minutes from the February 27, 2012, meeting indicate that the Committee of the Whole approved under agenda item "5(c)" a motion to "call for an advisory referendum question to be submitted to the electors of Belvidere Township to permit them to determine whether the Belvidere City Council should continue to pursue the issue of dissolving Belvidere Township."² The agenda for the meeting contained agenda items 1 through 5(b); there was no item 5(c) or any reference to the Township on the agenda. The motion identified as agenda item 5(c) was forwarded to the City Council for final consideration. Minutes of the March 5, 2012, meeting of

¹The membership of the City Council and the Committee of the Whole is identical.

²Meeting Minutes, Belvidere City Council, Committee of the Whole meeting, February 27, 2012.

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the City Council show that the City Council tabled the motion; the City Council referred the motion back to the Committee of the Whole at its March 19, 2012, meeting.

The Township's Request for Review alleged that the Committee of the Whole violated section 2.02(a) of OMA (5 ILCS 120/2/02(a) (West 2010)) by voting to approve a motion that did not appear on the agenda. The City's response to the Public Access Bureau asserted that the motion did not constitute final action because motions approved by the Committee of the Whole are forwarded to the City Council for possible final action. "All motions receiving a majority vote by the members of the committee present shall be forwarded to the 'city council' for final consideration" (City of Belvidere Municipal Code § 2-114(c), codified in Ord. No. 40H § 1, effective December 21, 2009). The Township replied that the Committee of the Whole took final action by voting on the motion.

Determination

Section 1.02 of OMA (5 ILCS 120/1.02 (West 2010)) broadly defines "public body " to include:

[A]ll legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, except the General Assembly and committees or commissions thereof.

Section 1 of OMA (5 ILCS 120/1 (West 2010)) provides that OMA is intended to ensure "that the actions of public bodies be taken openly and that their deliberations be conducted openly." Section 1 further provides that 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 any way."

Under section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2010)) "[a]n agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting. * * * The requirement of a regular meeting agenda shall not preclude the consideration of items not specifically set forth in the agenda." The Illinois Appellate Court has interpreted section 2.02(a) as permitting public bodies to discuss or deliberate upon matters that are not specifically set out in the agenda; a public body may not, however, take action on an item that

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does not appear in the agenda. *Rice v. Bd. of Trustees of Adams County*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002) (an agenda item identified as "New Business" which a public body approved to create a new benefit program for elected officials did not provide "sufficient advance notice" to comply with section 2.02(a)); *see also Jewell v. Board of Education, Du Quoin Community Units Schools, District No. 300*, 19 Ill. App. 3d 1091, 1094(5th Dist. 1974) (a School Board's roll call vote to dismiss an employee constituted "final action" under a prior version of OMA because such a vote "allows the people to know the positions taken by the individual members of the Board, so such members can be held accountable for their final actions").

Notably, the motion concerning the advisory referendum was the only matter that the Committee of the Whole voted on which did not appear on the agenda for the February 27, 2012, meeting. Thus, the City's construction of section 2.02(a) in its response to the Public Access Bureau is inconsistent with its own agenda, which listed as agenda items several other motions that the Committee of the Whole voted to forward to the City Council for final consideration. Although the motion to "call for an advisory referendum" did not have any binding effect, the Committee of the Whole went beyond discussion and deliberation when it *voted* to make that recommendation. To conclude otherwise would effectively exempt all advisory bodies and subsidiary bodies that are not empowered to take action that implements policies from the notice requirements of section 2.02(a), even though such public bodies are expressly subject to the requirements of OMA.

Accordingly, we conclude that the Committee of the Whole violated section 2.02(a) of OMA by voting on a matter that did not appear on the meeting agenda. However, we find that no remedial action is warranted because the City Council ultimately referred the motion back to the Committee of the Whole without taking final action.

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 (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Assistant Attorney General
Public Access Bureau

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cc: Ms. Keri-Lyn J. Krafthefer
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