



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

July 7, 2021

PUBLIC ACCESS OPINION 21-006
(Request for Review 2021-PAC-S-0079)

OPEN MEETINGS ACT:
Duty to Make Verbatim Recordings of
Closed Sessions of Committee Meetings

Ms. Pam DeMaris
2523 Meadow Lane
Centralia, Illinois 62801

Mr. John Schubert
Board President
South Central Illinois Mass Transit District
1616 East McCord Street
Centralia, Illinois 62801

Dear Ms. DeMaris and Mr. Schubert:

This is a binding opinion issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, this office concludes that the Personnel Committee (Committee) of the Board of Directors (Board) of the South Central Illinois Mass Transit District (District) violated section 2.06(a) of OMA (5 ILCS 120/2.06(a) (West 2018)) at its March 18, 2021, meeting because it did not make a verbatim recording of the closed session portion of the meeting.

BACKGROUND

In a letter dated April 16, 2021, and postmarked April 26, 2021, Ms. Pam DeMaris, an employee of the District, submitted a Request for Review to the Public Access

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Counselor alleging that the Committee violated OMA during its March 18, 2021, meeting.¹ Ms. DeMaris stated that she had been the minute taker and recorder of all Board meetings for ten years, but that she was recently told that the Board and legal counsel "would be taking care of all closed session minutes and recordings."²

When the time came for the Committee's closed session discussion at the March 18, 2021, meeting, Ms. DeMaris stated, "Board President John Schubert asked everyone to leave [the room], except for Personnel Committee members, the Finance [C]ommittee members that came early for their meeting, and Legal Counsel[.]" Ms. DeMaris alleged that after the closed session ended, she noticed that the lockbox where the Board had recently begun to store its recorder "was untouched[.]"³ She further stated that she "asked legal counsel if the meeting was recorded. He stated that he didn't know. I asked Board President John Schubert if the closed session had been recorded, he stated that it had not, and that they would 'address it'."⁴ Ms. DeMaris questioned the Board's ability to properly administer closed session minutes and verbatim recordings on its own, and suggested that in her absence "in closed session[.][.], the board takes the opportunity to discuss issues that should be discussed in open session but don't want to in order to avoid transparency."⁵

On May 4, 2021, the Public Access Bureau sent a copy of the Request for Review to Mr. Schubert in his capacity as Board President and Ms. Sara Nollman-Hodge, the District's Managing Director. The Public Access Bureau also sent Mr. Schubert and Ms. Nollman-Hodge a letter requesting copies of the agenda and open and closed session minutes of the Committee's March 18, 2021, meeting, and a written answer to the allegation that the Committee failed to make a verbatim recording of its closed session discussion during that meeting.⁶ On May 10,

¹Letter from Pam DeMaris to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 16, 2021).

²Letter from Pam DeMaris to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 16, 2021).

³Letter from Pam DeMaris to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 16, 2021).

⁴Letter from Pam DeMaris to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 16, 2021).

⁵Letter from Pam DeMaris to Sarah Pratt, Public Access Counselor, Office of the Attorney General (April 16, 2021).

⁶Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to John Schubert, Board President, South Central Illinois Mass Transit District, and Sara Nollman-Hodge, Managing Director, South Central Illinois Mass Transit District (May 4, 2021).

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2021, Mr. Schubert responded on behalf of the Committee, providing a copy of the draft closed session minutes, an affidavit by Ms. Nollman-Hodge, and a written answer.⁷

On May 13, 2021, the Public Access Bureau forwarded a copy of the Committee's written answer to Ms. DeMaris and notified her of her opportunity to reply.⁸ The following day, Ms. DeMaris replied by simply stating that she had "no additional response to submit[,] as her "allegation of violation of OMA on March 18, 2021 was confirmed by Board President John Schubert."⁹ On June 17, 2021, the Public Access Bureau extended the time within which to issue a binding opinion by 21 business days, to July 27, 2021, as permitted by section 3.5(e) of OMA.¹⁰

ANALYSIS

OMA declares that "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business and that the people have a right to be informed as to the conduct of their business." 5 ILCS 120/1 (West 2018).

Section 2.06(a) of OMA provides, in relevant part: "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." Section 1.02 of OMA (5 ILCS 120/1.02 (West 2018)) defines "public body" to include:

all 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.

⁷Letter from John Schubert, President, South Central Illinois Mass Transit District, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (May 10, 2021).

⁸Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Pam DeMaris (May 13, 2021).

⁹E-mail from Pam DeMaris to Joshua M. Jones (May 14, 2021).

¹⁰Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Pam DeMaris, John Schubert, Board President, South Central Illinois Mass Transit District, and Sara Nollman-Hodge, Managing Director, South Central Illinois Mass Transit District (June 17, 2021).

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By its plain language, OMA requires all public bodies, including a committee of a legislative body such as the Board, to make audio or video recordings of all their closed sessions.

In the Committee's answer to this office's inquiry letter, Mr. Schubert stated:

In review of the audio records, we could not locate a verbatim recording of the closed session of the Personnel Committee meeting of South Central Illinois Mass Transit District held on March 18, 2021. For some reason the recorder was inadvertently not turned on for this closed session. * * *

We will be putting new procedures in place regarding the recording of all South Central Illinois Mass Transit District closed sessions in an effort to prevent a non-recording of said meetings.^[11]

Thus, the Committee acknowledged its error, and Mr. Schubert pledged that the District would implement new procedures for all of its public bodies to prevent the issue from recurring. Mr. Schubert did not provide any details about the new procedures that he indicated the District intends to implement. Although the Board and its committees have discretion in determining how to ensure that they properly record all of their closed session discussions, they should adopt clear and effective procedures to prevent any similar violations in the future.¹²

¹¹Letter from John Schubert, President, South Central Illinois Mass Transit District, to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (May 10, 2021).

¹²Ms. DeMaris appears to allege in her Request for Review that the Board violated OMA by removing her from her role as minute taker and recorder of Board and Committee meetings; however, OMA does not address which officers or employees of a public body are responsible for making and keeping closed session verbatim recordings. Ms. DeMaris also alleged that, in her absence from closed sessions, the Board has discussed topics that OMA does not authorize it to discuss in closed session. Because Ms. DeMaris did not provide any facts to support her claim of improper closed session discussions, that allegation is speculative. Accordingly, this office did not inquire with the Board about that allegation. *See* 5 ILCS 120/3.5(a) (West 2018) (requiring a Request for Review to "include a summary of facts supporting the allegation."); 5 ILCS 120/3.5(b) (West 2018) (providing that no further action shall be taken when "the Public Access Counselor determines from the request for review that the alleged violation is unfounded[.]").

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

- 1) On March 18, 2021, the Personnel Committee of the Board of Directors of the South Central Illinois Mass Transit District closed a portion of its meeting to the public.
- 2) In a letter dated April 16, 2021, and postmarked on April 26, 2021, Ms. Pam DeMaris, a District employee, submitted a Request for Review to the Public Access Counselor alleging that the Personnel Committee violated OMA by failing to make a verbatim recording of its March 18, 2021, closed session discussion. Ms. DeMaris' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)).
- 3) On May 4, 2021, the Public Access Bureau sent a copy of the Request for Review to Board President John Schubert and Managing Director Sara Nollman-Hodge and asked the Committee to provide copies of the agenda and open and closed session minutes from its March 18, 2021, meeting, and a written answer to the allegation that it failed to make a verbatim recording of its closed session discussion during that meeting.
- 4) By letter dated, May 10, 2021, Mr. Schubert responded on behalf of the Committee, providing a copy of the draft closed session minutes, an affidavit by Ms. Nollman-Hodge, and a written answer. Mr. Schubert acknowledged that the Committee did not make a verbatim recording of its March 18, 2021, closed session discussion.
- 5) On May 13, 2021, this office sent a copy of the Committee's answer to Ms. DeMaris and notified her of her opportunity to reply. On May 14, 2021, she replied that she had nothing further to state, as Mr. Schubert's answer acknowledged the Committee's violation.
- 6) On June 17, 2021, the Public Access Bureau extended the time within which to issue a binding opinion by 21 business days, to July 27, 2021, as permitted by section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.
- 7) Section 2.06(a) of OMA provides, in relevant part, that "[a]ll 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." Section 1.02 of OMA expressly defines "public body" to include committees and other subsidiary bodies.

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8) The Committee acknowledged that it violated section 2.06(a) of OMA by failing to make a verbatim recording of its March 18, 2021, closed session discussion. Mr. Schubert asserted that the District would be implementing new procedures to ensure the recording of all future closed session discussions, but did not explain what those procedures would entail.

In accordance with these findings of fact and conclusions of law, the Board and its committees are directed to promptly adopt procedures to ensure that all of their closed sessions are properly recorded in accordance with section 2.06(a) of OMA. As required by section 3.5(e) of OMA, the Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2018).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2018). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Ms. Pam DeMaris as defendants. *See* 5 ILCS 120/7.5 (West 2018).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

cc: Ms. Sara Nollman-Hodge
Managing Director
South Central Illinois Mass Transit District
1616 East McCord Street
Centralia, Illinois 62801

CERTIFICATE OF SERVICE

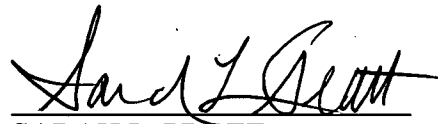
Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 21-006) upon:

Ms. Pam DeMaris
2523 Meadow Lane
Centralia, Illinois 62801
pamdemaris@gmail.com

Mr. John Schubert
Board President
South Central Illinois Mass Transit District
1616 East McCord Street
Centralia, Illinois 62801
john@bhinsur.com

Ms. Sara Nollman-Hodge
Managing Director
South Central Illinois Mass Transit District
1616 East McCord Street
Centralia, Illinois 62801
snollman@southcentraltransit.org

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on July 7, 2021.


SARAH L. PRATT
Public Access Counselor

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