OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 20, 2015

PUBLIC ACCESS OPINION 15-003
(Request for Review 2015 PAC 33652)

OPEN MEETINGS ACT:
Improper Discussion of Financial
Matters and Disposal of Property
in a Closed Meeting

Ms. Susan Sarkauskas
Staff Writer
The Daily Herald
385 Airport Road, Suite A
Elgin, Illinois 60123

Dr. Christine J. Sobek
President
Waubonsee Community College
Sugar Grove Campus
Route 47 at Waubonsee Drive
Sugar Grove, Illinois 60554

Dear Ms. Sarkauskas and Dr. Sobek:

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 2012)). For the reasons discussed below, this office concludes that the Board of Trustees of Waubonsee Community College (Board) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2013 Supp.), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014; 98-1027, effective January 1, 2015) at its February 4, 2015, special meeting by discussing the general financial condition of the College and the possible sale or lease of property owned by the College in a closed meeting.

BACKGROUND

On February 13, 2015, Ms. Susan Sarkauskas, on behalf of *The Daily Herald*, submitted a Request for Review alleging that the Board violated OMA during its February 4, 2015, special meeting by improperly discussing certain subjects in closed session. Specifically, Ms. Sarkauskas stated:

> Through the window of a doorway in to the room [in which the closed session was held], I could see a screen on which college administrators were projecting slides about what they were speaking to the board about. I noted the titles of the slides, and asked the board's clerk, who was not in the meeting, to alert the board I wanted to attend, because it appeared they were discussing things that did not qualify for closed session. She refused[.] * * *
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> I continued to watch the meeting through the doorway window. These are the subject titles I saw projected on the screen: "Financial uncertainties to the college," "Financial stewardship," "Education and O and M funds five-year forecast," "Forecast summary," "2015 tuition rates projection/consideration FY 2016-2020," "FY 2015 tuition and fees," "Tuition comparison" "Credit hour history," "What are the impacts of limited resources," and "Property tax levies." I also saw one that referenced "medical insurance."[1]

On February 17, 2015, the Public Access Bureau sent a copy of the Request for Review to the President of the College and asked that the Board or its representative provide a written response to the allegations raised therein, including identifying the specific exceptions that the Board cited when it voted to close a portion of the February 4, 2015, special meeting to the public. This office also requested a copy of the verbatim recording of the proceedings during the closed session and copies of the slide projections referenced in the Request for Review, together with copies of the agenda and the minutes of both the open and closed sessions.[2] Counsel for the Board furnished a response and the requested materials to the Public Access Bureau on February 27, 2015. The response stated that the Board had cited the exceptions

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[1]E-mail from Susan Sarkauskas, *Daily Herald* Staff Writer, to Natalie Bauer, Communications Director, Office of the Attorney General (February 17, 2015).

[2]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, to Christine J. Sobek, Ed.D, President, Waubonsee Community College (February 17, 2015).

provided for in sections 2(c)(1) and 2(c)(5) of OMA (5 ILCS 120/2(c)(1), (c)(5) (West 2013 Supp.), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014; 98-1027, effective January 1, 2015) as its basis for closing the meeting to the public.[3] Specifically, the response asserted that the Board discussed the "appointment, employment and compensation for additional personnel for FY 2016" and "strategies for lease or purchase of College real property[.]"[4] On March 2, 2015, the Public Access Bureau forwarded a copy of the Board's response to Ms. Sarkauskas.[5] She did not reply.

ANALYSIS

OMA is intended "to ensure that the actions of public bodies be taken openly and that their deliberations be conducted openly." 5 ILCS 120/1 (West 2012). Section 2(a) of OMA provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Such exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions ***are to be strictly construed, extending only to subjects clearly within their scope.***" (Emphasis added.) 5 ILCS 120/2(b) (West 2012), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014; 98-1027, effective January 1, 2015.

Section 2(c)(1) of OMA

The minutes of the Board's February 4, 2015, meeting indicate that the Board unanimously voted to close the meeting to discuss, in part, the "appointment, employment, compensation, discipline, performance, or dismissal of specific employees of the public body or legal counsel for the public body, including hearing testimony on a complaint lodged against an employee of the public body or against legal counsel for the public body to determine its validity[.]"[6] This phrase is taken directly from section 2(c)(1) of OMA.

Section 2(c)(1) allows a public body to close a meeting or a portion thereof to discuss employment-related topics such as the performance, discipline, and dismissal of an employee (*Copley Press, Inc. v. Board of Education for Peoria School District No. 150*, 359 Ill.

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[3]Letter from Scariano, Himes and Petrarca, Chtd., by Paulette A. Petretti, One of the College's Attorneys, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau (February 27, 2015), at 1.

[4]Letter from Scariano, Himes and Petrarca, Chtd., by Paulette A. Petretti, One of the College's Attorneys, to Steve Silverman, Assistant Bureau Chief, Public Access Bureau (February 27, 2015), at 2.

[5]Letter from Steve Silverman, Assistant Bureau Chief, Public Access Bureau, to Susan Sarkauskas, Staff Writer, *The Daily Herald* (March 2, 2015).

[6]Waubonsee Community College Board of Trustees, Special Meeting, February 4, 2015, Minutes 1.

App. 3d 321, 325 (3rd Dist. 2005)) or the reclassification of an employee (*Henry v. Anderson*, 356 Ill. App. 3d 952, 957 (4th Dist. 2005)). This office has previously determined, however, that a public body may not properly discuss budgetary matters in a meeting closed to the public pursuant to section 2(c)(1), even if the budgetary matters may directly or indirectly affect its employees: "To the extent that that a public body is required to discuss the relative merits of individual employees as a result of its fiscal decisions, such discussions may properly be closed to the public under section 2(c)(1) of OMA. ***The underlying budgetary discussions leading to those decisions, however, may not be closed to the public.***" (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 12-011, issued July 11, 2012, at 3; *see also* Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 9 ([T]he exception "is intended to protect the identity of prospective appointees or employees, and reputation of public employees").

The verbatim recording of the February 4, 2015, closed session reflects that the Board primarily discussed the financial condition of the College and various issues relating thereto. The discussion did briefly touch upon general matters related to employees in general, such as staffing levels and the importance of having a financial context for upcoming negotiations with its employees. Although the fiscal matters discussed by the Board may well have future implications with respect to the employment and compensation of employees of the College, section 2(c)(1) does not authorize a public body to close a meeting to discuss such budgetary issues. Accordingly, this office concludes that the Board violated OMA by discussing in closed session matters outside the scope of section 2(c)(1).

Section 2(c)(5) of OMA

The minutes of the meeting indicate that the Board also referenced the discussion of "[t]he purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired[,]"[7] as an additional basis for closing the meeting to the public. This specific phrase appears in section 2(c)(5) of OMA, which permits a public body to discuss such matters in a closed meeting.

Legislative intent is best evidenced by the language used in a statute, and if the statutory language is clear and unambiguous, it must be given effect as written. *Blum v. Koster*, 235 Ill. 2d. 21, 29 (2009). We may not read into the unambiguous language of a statute exceptions, limitations or conditions that the General Assembly did not express. *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 189 (1990).

The plain language of section 2(c)(5) limits its applicability to discussions concerning the purchase or lease of real property for the use of a public body. The verbatim

[7]Waubonsee Community College Board of Trustees, Special Meeting, February 4, 2015, Minutes 1.

recording of the Board's February 4, 2015, closed session discloses that although the Board's discussions did briefly touch upon the College's efforts to sell or lease property owned by the College,[8] the subject of the purchase or lease of property for the use of the College was never raised. Discussions concerning the sale or lease of College-owned property are outside the scope of section 2(c)(5) of OMA. Moreover, although section 2(c)(6) of OMA (5 ILCS 120/2(c)(6) (West 2013 Supp.), as amended by Public Acts 98-756, effective July 16, 2014; 98-1039, effective August 25, 2014; 98-1027, effective January 1, 2015) does permit a public body to discuss the "setting of a price for sale or lease of property owned by the public body" in a closed meeting, the language of that exception is narrow and in any event would not extend to the discussion of general issues concerning the disposal of publicly-owned property.

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 February 4, 2015, the Board of Trustees of Waubonsee Community College held a special meeting. The Board closed a portion of that meeting to the public, reciting as its authority for doing so the operative language of sections 2(c)(1) and 2(c)(5) of the Open Meetings Act. Section 2(c)(1) of OMA permits a public body to close a meeting or a portion thereof to discuss employment-related topics such as the performance, discipline, or dismissal of specific employees of the public body. Section 2(c)(5) of OMA authorizes a public body to discuss the purchase or lease of real property for the use of a public body in a closed meeting.

2) On February 13, 2015, Ms. Susan Sarkauskas submitted a Request for Review in which she alleged that the Board violated OMA by discussing matters in the February 4, 2015, closed session that were outside the scope of the exceptions cited by the Board. Ms. Sarkauskas's 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 2012)). Therefore, the Attorney General may properly issue a binding opinion with respect to Ms. Sarkauskas's Request for Review.

3) On February 17, 2015, the Public Access Bureau sent a copy of the Request for Review to the President of the College and asked the Board to respond to Ms. Sarkauskas's allegations and also to provide copies of the February 4, 2015, special meeting agenda, open and closed session minutes, closed session verbatim recording, and slide projections presented during the closed session for this office's review.

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[8]Waubonsee Community College Board of Trustees, Special Meeting, February 4, 2015, Audio CD (on file with the office), 25:33-25:50, 28:45-37:03.

4) On February 27, 2015, the Board provided its written response and the requested materials. The response stated that the Board had discussed the appointment, employment, and compensation of additional personnel for fiscal year 2016, and strategies for the lease or purchase of College property. On March 2, 2015, the Public Access Bureau forwarded a copy of the response to Ms. Sarkauskas; she did not reply.

5) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c).

6) Our review of the pertinent materials provided by the Board reflects that during its February 4, 2015, closed session, the Board primarily discussed the financial condition of the College and other budgetary and fiscal matters not directly related to employment issues. Although the fiscal matters discussed by the Board may ultimately have an impact on the employment or compensation of employees of the College, section 2(c)(1) does not authorize a public body to hold a closed session to discuss general budgetary issues. Accordingly, the Attorney General concludes that the Board violated OMA by discussing in closed session matters outside the scope of the section 2(c)(1) exception.

7) The Attorney General further finds that the Board's discussions concerning the possible sale or lease of College property during the closed session were not authorized by section 2(c)(5) of OMA, the second exception cited by the Board when it voted to close the meeting. Section 2(c)(5) is limited to discussions concerning the acquisition of property for the use of the public body; it is not applicable to discussions concerning the disposal of public property. Accordingly, the Attorney General concludes that the Board violated OMA by discussing in closed session matters outside the scope of the section 2(c)(5) exception.

8) These findings necessarily compel the further finding that the Board violated section 2(a) of OMA, which requires that all meetings of public bodies be open to the public unless excepted by section 2(c), because the public was excluded from the discussions in question notwithstanding that neither section 2(c)(1) nor section 2(c)(5) of OMA was applicable.

In accordance with these findings of fact and conclusions of law, the Board is directed to remedy this violation by disclosing to Ms. Sarkauskas and making available to the public a copy of the closed session minutes for and the verbatim recording of the closed session portion of the February 4, 2015, special meeting, together with copies of the slide projections that were referred to during the discussion. The Board is also directed to conduct its future meetings in full compliance with 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 2012)).

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 2012). 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. Susan Sarkauskas as defendants. *See* 5 ILCS 120/7.5 (West 2012).

Very truly yours,

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