



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

April 6, 2020

*Via electronic mail*

Mr. Cal Skinner  
McHenry County Blog  
275 Meridian Street  
Crystal Lake, Illinois 60014  
Calskinner2@gmail.com

RE: OMA Request for Review – 2020 PAC 62329

Dear Mr. Skinner:

This determination is issued pursuant to section 3.5(a) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(a) (West 2018)). For the reasons discussed below, the Public Access Bureau has determined that no further action is warranted in this matter.

On March 27, 2020, this office received your Request for Review alleging that the McHenry County Board of Health (Board) violated OMA at its March 23, 2020, meeting. You stated: "I complain because, according to its agenda, which is attached, the public had no opportunity to comment at the meeting."<sup>1</sup> The agenda you provided stated that the Board would hold a "Virtual Meeting" and provided an internet link that the public could use to listen to the meeting. The agenda also stated that public comments were to be submitted in writing two hours before the meeting commenced and provided an e-mail address for the submission of comments. You have not alleged that you or any other member of the public attempted to submit written comments but were unable to do so, or that written comments did not reach the Board members.

Section 2.06(g) of OMA provides: "Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office construes your Request for Review as alleging that the Board violated section 2.06(g) by restricting public comments to e-mail submissions and not providing members of the public with an opportunity to verbally address Board members.

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<sup>1</sup>E-mail from Cal Skinner, McHenry County Blog, to Public Access [Bureau, Office of the Attorney General (March 27, 2020).

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On March 9, 2020, pursuant to his authority under section 7 of the Illinois Emergency Management Agency Act (IEMA Act) (20 ILCS 3305/7 (West 2018)), the Governor of Illinois "declare[d] all counties in the State of Illinois as a disaster area" in response to the outbreak of COVID-19.<sup>2</sup> The Disaster proclamation became effective immediately on March 9, 2020, to "remain in effect for 30 days."<sup>3</sup> The Governor then issued a series of executive orders for coping with the disaster. On March 16, 2020, the Governor issued Executive Order 2020-07, which provides, in relevant part:

During the duration of the Gubernatorial Disaster Proclamation, the provisions of the Open Meetings Act, 5 ILCS 120, requiring or relating to in-person attendance by members of a public body are suspended. Specifically, (1) the requirement in 5 ILCS 120/2.01 that "members of a public body must be physically present" is suspended; and (2) the conditions in 5 ILCS 120/7 limiting when remote participation is permitted are suspended.<sup>4</sup>

Because of the rapid spread of COVID-19 throughout the State of Illinois, on March 20, 2020, the Governor issued Executive Order No. 2020-10. Among other things, that Order provides that, subject to certain limited exceptions, as of 5:00 p.m. on March 21, 2020, "all individuals currently living within the State of Illinois are required to stay at home or at their place of residence except as allowed in this Executive Order[.]" and that "[a]ll businesses and operations in the State, except Essential Businesses and Operations, \* \* \* are required to cease all activities within the State except Minimum Basic Operations[.]"<sup>5</sup>

As discussed above, section 2.06(g) of OMA provides members of the public with a statutory right to address a public body pursuant to its established and recorded rules. No provision of OMA sets out guidelines concerning public comment during public health emergencies that preclude public bodies from physically convening meetings. It would be illogical to construe OMA as prohibiting a public body from meeting remotely during public health emergencies because the limitations of meeting in such a format may necessitate a temporary change in the public body's method of allowing public comment. *See Phoenix Bond & Indemnity Co.*, 194 Ill. 2d 99, 107 (2000) (A statute should not be construed in a way that

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<sup>2</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 2.

<sup>3</sup>Gubernatorial Disaster Proclamation, issued March 9, 2020, at 3.

<sup>4</sup>Executive Order 2020-07, §6, issued March 16, 2020, at 3.

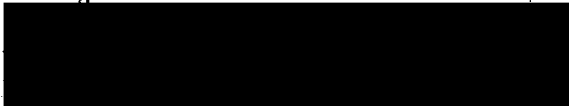
<sup>5</sup>Executive Order No. 2020-10, §1(2), issued March 20, 2020.

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would defeat its purpose "or yield an absurd or unjust result."). Although it is unclear whether the Board used technology for the March 23, 2020, meeting that would have enabled it to permit verbal comments from members of the public who listened to the meeting on the internet, this office is unable to conclude that the Board unreasonably restricted public comment under the exigent circumstances that existed at that time. Allowing public comment to be submitted via e-mail allowed members of the public to address the substance of their comments to the Board. Section 2.06(g) does not require public bodies to answer questions or otherwise interact with the public. This provision merely provides the public with a statutory right to address the Board, which it was permitted to do via e-mail at its March 23, 2020, meeting. Taking into account all of these factors and the highly specific circumstances surrounding the meeting, this office has determined that no further action is warranted in this matter.

This file is closed. If you have questions, you may contact me at (312) 814-6756.  
or [ssilverman@atg.state.il.us](mailto:ssilverman@atg.state.il.us).

Very truly yours,



STEVE SILVERMAN  
Bureau Chief  
Public Access Bureau

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cc: Dr. William Stinson  
President  
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McHenry County Health Department  
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