



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Kwame Raoul**  
ATTORNEY GENERAL

August 21, 2019

*Via electronic mail*  
Mr. Josh Morgan  
Station Manager, WREX-TV  
jmorgan@wrex.com

*Via electronic mail*  
Mr. David J. Kurlinkus  
Chief of Civil Bureau  
Office of the Winnebago County State's Attorney  
400 West State Street, Suite 619  
Rockford, Illinois 61101  
dkurlinkus@wincoil.us

RE: OMA Request for Review – 2019 PAC 57961

Dear Mr. Morgan and Mr. Kurlinkus:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons that follow, the Public Access Bureau concludes that the Finance Committee and the Operations and Administrative Committee (Committees) of the Winnebago County Board (Board) discussed matters during the closed session of its May 2, 2019, combined meeting that were not authorized by the exception cited by the Committees.

On May 3, 2019, Mr. Josh Morgan, on behalf of WREX-TV, submitted the above-captioned Request for Review alleging that the Committees violated OMA by improperly closing a portion of their May 2, 2019, combined meeting. Specifically, Mr. Morgan alleged that the Committees entered closed session to discuss matters relating to a 9-1-1 agreement with municipalities, and that this discussion was not authorized by the closed session exception for pending litigation that the Committees cited as their basis for entering closed session.

On May 10, 2019, this office forwarded a copy of the Request for Review to the Committees and asked them to provide this office with copies of the closed session minutes and

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the closed session verbatim recording of that meeting for this office's confidential review, together with a written response to Mr. Morgan's OMA allegations. On May 28, 2019, this office received the requested materials and written response. On June 4, 2019, this office forwarded a copy of the response to Mr. Morgan, who replied on June 11, 2019.

### DETERMINATION

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 2018). Section 2(a) of OMA (5 ILCS 120/2(a) (West 2018)) 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." Those "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." 5 ILCS 120/2(b) (5 ILCS 120/2(a) (West 2018)); *see also Henry v. Anderson*, 356 Ill. App. 3d 952, 996-997 (4th Dist. 2005) (strictly construing OMA section 2(c)(11)).

Section 2(c)(11) (5 ILCS 120/2(c)(11) (West 2017 Supp.), as amended by Public Act 100-646, effective July 27, 2018) of OMA authorizes a public body to close a meeting to discuss "[l]itigation, when an action against, affecting or on behalf of the particular public body has been filed and is pending before a court or administrative tribunal[.]" The Attorney General has construed the scope of this exception as limited to "the strategies, posture, theories, and consequences of the litigation itself." Ill. Att'y Gen. Op. No. 83-026, issued December 23, 1983, at 14. The Public Access Bureau has previously determined that pending litigation between a county and its ambulance service provider did not permit discussion in closed session of the terms of a new ambulance service agreement between that same county and a new provider. Ill. Att'y Gen. PAC Req. Rev. Ltr. 48034, 48074, issued September 15, 2017, at 5-7. In that matter, this office found that a county board had discussed three separate agreements in closed session: (1) a settlement agreement and mutual release of claims between the county and its previous provider; (2) a settlement agreement and mutual release of claims between the previous provider and a new provider; and (3) a new ambulance service agreement between the county and the new provider. Although the first two agreements were proper topics for closed session, given the pending litigation between the county and the previous provider, this office determined that discussion of the terms of the agreement with the new provider fell outside the scope of that exception. "The County's new contract \* \* \* did not directly relate to the pending litigation and settlement with [the previous provider] because it did not obligate [the previous provider] to any additional obligations and services." Ill. Att'y Gen. PAC Req. Rev. Ltr. 48034, 48074, issued September 15, 2017, at 6.

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The agenda for the May 2, 2019, combined meeting of the Committees listed closed session as Item E, and listed as Item F "911 Agreement with Municipalities."<sup>1</sup> Mr. Morgan's Request for Review alleged that when the Committees arrived at Item F on the agenda, the State's Attorney stated that she had advised the Committee members to discuss that item in closed session because of pending litigation. The draft minutes, furnished by the Committees for this office's confidential review, and the verbatim recording of the open session portions of the meeting before and after the closed session, support Mr. Morgan's recitation of events. Furthermore, the Committees' response to the Request for Review acknowledges that they discussed the "9-1-1 issue" in closed session.<sup>2</sup>

The Committees argue that "discussion of the 9-1-1 issue was a proper topic for closed session since it was a topic included in the lawsuit filed by the Sheriff against the County Board[.]" specifically referencing case no. 2019-CH-190.<sup>3</sup> In his reply, Mr. Morgan noted that one of the Committee chairs commented publicly after the meeting that he believed parts of the closed session discussion were impermissible. Mr. Morgan also argued that "while 9-1-1 is mentioned in [the sheriff's lawsuit], the context has nothing to do with what was allegedly discussed in closed session. Just because the word 9-1-1 shows up in a lawsuit, does not warrant a closed discussion by public officials."<sup>4</sup>

The Committees furnished this office a copy of the Verified Complaint in *Caruana v. County of Winnebago*, 2019-CH-190, in which the Sheriff of Winnebago County, Gary L. Caruana, brought suit against the County, the Chairman of the County Board, and the County Treasurer, seeking declaratory relief that the FY2019 budget passed by the County Board for the Sheriff's Office is null and void because it does not provide sufficient funds for the operation of the office, and an injunction prohibiting the County Board from interfering with the operations of the Sheriff's Office through budgetary enactments or conditions. The Sheriff's lawsuit was filed on March 29, 2019, and was pending at the time of the May 2, 2019, combined meeting.

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<sup>1</sup>Finance Committee and Operations & Administrative Committee, Combined Meeting, May 2, 2019, Agenda.

<sup>2</sup>Letter from David J. Kurlinkus, Chief of Civil Bureau, Office of the Winnebago County State's Attorney, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (May 28, 2019), at [1].

<sup>3</sup>Letter from David J. Kurlinkus, Chief of Civil Bureau, Office of the Winnebago County State's Attorney, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (May 28, 2019), at [1].

<sup>4</sup>E-mail from Josh Morgan, Station Manager, WREX-TV, to Leah Bartelt and David Kurlinkus (June 11, 2019).

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Specifically with respect to 9-1-1 services, the lawsuit states that the Sheriff is "contractually obligated by the [County] Board to operate the county-wide 9-1-1 Call Center, providing radio communications and dispatch services for both the incorporated (excluding the City of Rockford) and unincorporated portions of Winnebago County[,]" and that the 9-1-1 Call Center is one of several divisions and bureaus of the Sheriff's Office.<sup>5</sup> Paragraph 18 alleges that the County Board "attempted to wrest management and control of the 9-1-1 Center from the Sheriff's to the County Administrator, Carla Paschal, contrary to the terms of the existing agreement."<sup>6</sup> Finally, paragraph 27 argues that the FY2019 proposed budget that the Sheriff submitted to the County Board included sufficient funding for the "restoration of previously slashed allotments for 9-1-1 service."<sup>7</sup> Our review of the Verified Complaint indicated that these four paragraphs are the only explicit references in the lawsuit to any "9-1-1 issue."

This office has reviewed the recordings from the closed session. The first part of the closed session meeting constituted a two-and-a-half minute discussion concerning the pending litigation; that discussion is within the scope of section 2(c)(11).

The remainder of the discussion concerned, as described on the agenda, issues related to the "911 Agreement with Municipalities." Based on our review of the verbatim recording, the Committees' closed session discussion of the "911 Agreement with Municipalities" did not relate to the strategies, posture, theories, and consequences of *Caruana v. County of Winnebago*, or the portions of that litigation which concern 9-1-1. As described above, the litigation brought by the Sheriff alleges that the County Board "attempted to wrest management and control of the 9-1-1 Center from the Sheriff's to the County Administrator," and that the Board did not approve a proposed budget that would have allowed the Sheriff to restore "previously slashed allotments for 9-1-1 service."<sup>8</sup> The part of the closed session discussion relating to 9-1-1 addressed issues that were not raised in the Verified Complaint, and it is not apparent from the verbatim recording how the 9-1-1 issues discussed by the Committees relate to the allegations in the complaint. Because OMA requires that the closed session exceptions are to be "strictly construed, extending only to subjects clearly within their scope" (5 ILCS

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<sup>5</sup>Verified Complaint for Declaratory, Injunctive, Mandamus and Accounting Relief, *Caruana v. County of Winnebago*, 2019-CH-190, at ¶¶ 8, 10(B).

<sup>6</sup>Verified Complaint for Declaratory, Injunctive, Mandamus and Accounting Relief, *Caruana v. County of Winnebago*, 2019-CH-190, at ¶ 18.

<sup>7</sup>Verified Complaint for Declaratory, Injunctive, Mandamus and Accounting Relief, *Caruana v. County of Winnebago*, 2019-CH-190, at ¶ 27.

<sup>8</sup>Verified Complaint for Declaratory, Injunctive, Mandamus and Accounting Relief, *Caruana v. County of Winnebago*, 2019-CH-190, at ¶¶ 18, 27.

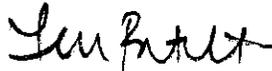
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120/2(b)), this office concludes that the Committees' closed session discussion of a "911 Agreement with Municipalities" was not authorized by section 2(c)(11) of OMA.

To remedy this violation, this office asks the Committees to vote to disclose the portions of the May 2, 2019, closed session minutes and closed session verbatim recording that document the Committees' discussion of the "911 Agreement with municipalities," and then provide Mr. Morgan with copies of those materials. These portions of the discussion begin at minute 2:34 on the copy of the verbatim recording provided to this office for its confidential review.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. Please contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter if you have questions. This correspondence serves to close this matter.

Very truly yours,



LEAH BARTELT  
Assistant Attorney General  
Public Access Bureau

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