



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Kwame Raoul
ATTORNEY GENERAL

October 8, 2019

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. Kurlinkus:

The Public Access Bureau has received your request that this office reconsider and modify its August 21, 2019, determination that the Finance Committee and Operations and Administrative Committee (Committees) of the Winnebago County Board violated section 2(a) of the Open Meetings Act (OMA) (5 ILCS 120/2(e) (West 2018)) by discussing matters in closed session that exceed the scope of section 2(c)(11) of OMA (5 ILCS 120/2(c)(11) (West 2018)).

The procedures for processing a Request for Review are clearly set forth in section 3.5(a) of OMA (5 ILCS 120/3.5 (West 2018)). In accordance with those procedures, this office fully reviewed the materials and arguments submitted by the parties. The request for reconsideration asserts, for the first time, that the Committees' closed session discussion also related to potential litigation under the continued representation of the special prosecutor for the Sheriff for all 9-1-1 issues, and the threat of litigation surrounding the 9-1-1 agreement with municipalities. However, the Committees' May 28, 2019, response to this office argued only that the closed session related to "pending litigation" and specifically directed our attention to *Caruana v. County of Winnebago*, 2019-CH-190. In referencing that lawsuit, the Committees furnished this office only a copy of the complaint in that lawsuit, and made no mention of the special prosecutor's expanded authority to consider *potential* lawsuits or legal actions.

The response to this office was consistent with the explanation provided to the public as to why the Committees discussed the 9-1-1 agreement with municipalities in closed session. When the Committees voted to enter closed session, the Committee chair stated that the

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purpose of closed session was to discuss "pending litigation." More specifically, the verbatim recording of the second part of the open session of the May 2, 2019, demonstrates that the State's Attorney stated to the members of the public attending the meeting that she had advised the Committees to discuss the 9-1-1 agreement in closed session because it was "subject to pending litigation," making no reference to any potential or threatened litigation.¹

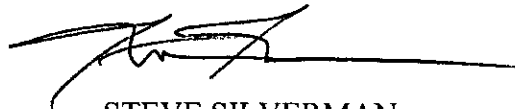
Furthermore, section 2(c)(11) of OMA allows for closed session discussion of:

Litigation, 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, or when the public body **finds that an action is probable or imminent, in which case the basis for the finding shall be recorded and entered into the minutes of the closed meeting.** (Emphasis added.)

Your request for reconsideration does not identify any "finding" made by the Committees prior to or during the May 2, 2019, closed session that a litigation action of the nature described in your request for reconsideration is probable or imminent, and your request for reconsideration does not demonstrate that the Committees "recorded and entered" that finding into its closed meeting minutes. Finally, although your request for reconsideration describes interactions between County representatives and representatives of the municipalities concerning the 9-1-1 agreement, it does not describe a specific interaction that occurred prior to the Committees' May 2, 2019, meeting that would have provided the Committees a basis for determining that a litigation action was probable or imminent. Our determination in this matter is limited to the circumstances at the time of that meeting.

Accordingly, this office respectfully declines to vacate or modify its determination in this matter. If you have any questions, please contact me at (312) 814-6756.

Very truly yours,



STEVE SILVERMAN
Bureau Chief
Public Access Bureau

¹Finance Committee and Operations and Administrative Committees, Winnebago County Board, Meeting, May 2, 2019, Open Session Recording Part 2, 00:09-00:20.

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cc: *Via electronic mail*
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