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August 31, 2021

Richard D. Amato
DeKalb County State's Attorney
133 West State Street, #106
Sycamore, IL 60178

Re: City of Sandwich
Our File No. 13827.000221

Dear Mr. Amato,

As I am certain you know, we represent the City of Sandwich and have for many years. We received a copy of your August 27, 2021, letter to Mayor Todd Latham regarding alleged OMA violations. Since you did not copy us on your correspondence, we were not aware of such accusations until our client provided us with your letter. It is clear to us that we interpret the law and the requirements of the Open Meetings Act differently, and we want to take this opportunity to respond.

We must first address your statement that the City did not provide the general subject matter of the item up for a vote, as instructed in 5 ILCS 120/2.02(c). You admit that this section only addresses an "ordinance or resolution," and you provide no case law or even Attorney General Opinions that indicate subsection (c) of Section 2.02 would apply to anything other than ordinances and resolutions. We have found nothing that supports your conclusions and would ask that you provide such a citation if you are aware of one. Instead, we found the opinion of the Illinois Supreme Court in *Board of Education of Springfield School District No. 186 v. Attorney General*, 2017 IL 120343 (2017), in which the Attorney General's Office makes many of the same arguments that you assert in your letter regarding intent and the amount of detail necessary to comply with the statute. The Court rejected these same arguments, and I would suggest that you read this opinion carefully. After a thorough review, it is clear that the City of Sandwich has met the standards of this case (such standards being provided by the Supreme Court) and the City has indeed complied with the Open Meetings Act.

You suggest in your letter that one should not "ignore the intent of our legislature," and yet, as a general principle of law, one cannot look to the legislature's intent in a statute unless the statute is found to be ambiguous. There is no ambiguity in either section of the statute you have cited; therefore, it is improper to infer intent when none is required. Agenda items regarding

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ordinances or resolutions only require a statement of the general subject matter. In this case, the City's action was not an ordinance or resolution that required more detail. Even assuming for the sake of argument that subsection (c) would apply to this item, you have suggested that the City must provide in the agenda "what litigation it is related to, how much the settlement was for, or who it was with." When you read the *Board of Education* case, however, you will learn that none of this information is necessary to produce a sufficient agenda item, even for a resolution or ordinance.

You also cite to 5 ILCS 120/2(e) as a basis of an alleged violation of OMA, because the City did not "publicly recite" the details of the agreement at the meeting. However, in the *Board of Education* case, the Court rejected the Attorney General's argument that a verbal recitation is required. The Court held that "[t]he language of section 2(e) does not mention an explanation, the significance of the action being considered, or the attendees' understanding. Rather, the plain meaning of the phrase 'public recital of the nature of the matter being considered' is that the public body must state the essence of the matter under consideration, its character, or its identity." 2017 IL 120343 ¶46. (Emphasis added) Under section 2(e), the City was required to recite the "nature of the matter," which may be described in nonspecific terms, and "other information" to inform the public of the type of business addressed. *Id.* at ¶50. The City complied with the requirements described by the Illinois Supreme Court by stating the nature of the matter (authorization of the mayor to sign a settlement agreement) and other information to inform the public (the purpose of such agreement being to compromise in pending litigation). Importantly, the *Board of Education* case makes clear that the City "need not provide an explanation of its terms or its significance." *Id.* at ¶64. Based on the foregoing, the City provided adequate information to comply with the requirements of the statute as outlined by the Illinois Supreme Court.

Further, your letter mentioned and attached a FOIA denial letter dated August 26, 2021, which you allege was a denial under 5 ILCS 140/7(1)(f), the preliminary draft exemption. We would like to bring to your attention the typographical error in the City's "Answer," which states as written, "Your request is denied inasmuch as the City does have draft(s) versions of the Settlement Agreement(s)." However, the response was intended to state that "the City does *not* have draft(s)..." We apologize for the mistake and the confusion this has caused and would like to further reiterate that the City does not have draft versions of any settlement agreements; therefore, there are no records responsive to WSPY's request for drafts.

Finally, our office and the City of Sandwich do not appreciate the accusation that the City did anything to purposefully violate a state statute. The City makes every effort to be transparent to the complainant here in particular, and while mistakes may happen, there is never any malicious intent by the City of Sandwich and its staff. The City only has one matter that is in pending litigation. WSPY and anyone who reads its website or listens to its radio station knows this, and they know exactly what case is at issue. Whenever the City Council moved to go into closed session, citing pending litigation, WSPY never failed to report that it was to address this particular matter. It is disingenuous at best for WSPY to now claim it did not know what "pending

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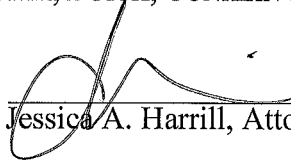
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litigation" this settlement agreement pertained to when it has followed and reported on it every time "pending litigation" has been noted on the agenda or otherwise brought up at recent meetings. This complaint is nothing but an attempt to aggravate matters for the City while the City works toward resolving litigation on behalf of the citizens of Sandwich.

Finally, in the future, please do not disregard the fact that our office represents the City of Sandwich and, at a minimum, we should receive any communications you send to our client. As an attorney, I know you understand the requirements our profession places on us when communicating with a represented party. Going forward, we would also appreciate an opportunity to discuss any potential issues or concerns you may have so as to avoid some of the misunderstandings that have obviously occurred in this matter.

Sincerely,

FOSTER, BUICK, CONKLIN & LUNDGREN, LLC

By: 
Jessica A. Harrill, Attorney

JAH/jfd
c.c.: Mayor Todd Latham
City Clerk, Denise Ii
WSPY
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