



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

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ATTORNEY GENERAL

April 14, 2014

RECEIVED

APR 17 2014

Mid Valley Special Education

Ms. Patti Lopuszanski  
532 Carriage Way  
South Elgin, Illinois 60177

Mr. Todd Hayden  
Robbins Schwartz  
9550 Bormet Drive, Suite 201  
Mokena, Illinois 60448-8360

RE: OMA Request for Review – 2013 PAC 26020

Dear Ms. Lopuszanski and Mr. Hayden:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Mid-Valley Special Education Cooperative Executive Advisory Board (Board) did not violate OMA during its September 6, 2013, special meeting.

**BACKGROUND**

On September 11, 2013, Ms. Patti Lopuszanski submitted a Request for Review to the Public Access Bureau alleging that the Board had failed to include an opportunity for public comment on the agenda for its September 6, 2013, special meeting. Ms. Lopuszanski alleged that, as a result of the omission, the public was not afforded the right to participate at that special meeting.

This office forwarded a copy of the Request for Review to the Board and asked it to respond to Ms. Lopuszanski's allegations. On October 9, 2013, the Board responded that the absence of a "public comment" item on the agenda for its September 6, 2013, meeting was an oversight. The Board further explained:

Neither Ms. Lopuszanski nor any other members of the public were present at the meeting and no one requested to provide or participate in any public comment at the meeting. As a result, no

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one was denied the opportunity to present public comment at the meeting.<sup>1</sup>

In her reply to that comment, Ms. Lopuszanski questioned the Board's assertion that the omission was unintentional. Ms. Lopuszanski also alleged that the Board improperly entered into closed session during the September 6, 2013, meeting to discuss the concerns that she had relayed, in writing, to the Board on July 30, 2013.

On April 2, 2014, the office sought additional information from the Board in light of Ms. Lopuszanski's allegations about the closed session discussions. On April 8, 2014, the Board's Attorney responded that the closed session was properly called under section 2(c)(1) of OMA (5 ILCS 120/2(c)(1) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013) to discuss allegations of misconduct against certain employees at Mid-Valley Special Educative Cooperative (Mid-Valley). The Board also provided copies of the verbatim recording and meeting minutes of its September 6, 2013, closed session for this office's confidential review.

### **DETERMINATION**

Ms. Lopuszanski has alleged that the Board violated OMA by failing to include public comment as an item on its September 6, 2013, meeting agenda. Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This office has previously determined that OMA does not require public bodies to list "public comment" as a specific item on the agenda. Ill. Att'y Gen. PAC Req. Rev. Ltr. 14414, issued November 8, 2011. Rather, the intention of section 2.06(g) is to guarantee citizens the right to address public bodies under the rules established by the public body.

Although it is undisputed that the Board's September 6, 2013, meeting agenda did not list "public comment" as an item, no evidence was presented to the Public Access Bureau to indicate that Ms. Lopuszanski, or any other member of the public, was denied an opportunity to speak at the meeting. Accordingly, this office concludes that there is insufficient evidence to conclude that the Board violated section 2.06(g) of OMA. *See* Ill. Att'y Gen. PAC Rev. Ltr. 24172, issued April 26, 2013 (declining to find a violation of section 2.06(g) when no person had been denied the right to address the public body).

Next, Ms. Lopuszanski alleged that the Board improperly entered into closed session during the September 6, 2013, special meeting. Section 2(a) of OMA (5 ILCS 120/2(a) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013) provides that "all meetings of public bodies shall be open to the public unless excepted in

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<sup>1</sup>Letter from Todd K. Hayden, to Tola Sobitan, Assistant Attorney General, Public Access Bureau (October 9, 2013).

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subsection (c) and closed in accordance with Section 2a." The exceptions to the requirement that public bodies openly deliberate "are to be strictly construed, extending only to subjects clearly within their scope." 5 ILCS 120/2(b) (West 2012), as amended by Public Acts 98-49, effective July 1, 2013; 98-63, effective July 9, 2013).

The minutes for the September 6, 2013, meeting indicated that the Board entered closed session pursuant to the section 2(c)(1) exception, which permits closed session discussion of "the appointment, employment, compensation, discipline, performance or dismissal of specific employees of 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." The applicability of the section 2(c)(1) exception "is limited to consider[ing] information concerning an *individual employee or officer*, and \* \* \* the purpose of the exception is to protect the identity and reputation of a person[.]" (Emphasis added.) 1974 Ill. Att'y Gen. Op. No. S-726, issued March 22, 1974, at 9.

We have reviewed the closed session recording and determined that the Board's discussions were authorized by the section 2(c)(1) exception. The discussions focused solely on the alleged misconducts of specific Mid-Valley employees. Accordingly, this office concludes that the Board's September 6, 2013, closed session meeting complied with the provisions of OMA.

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

Very truly yours,



TOLA SOBITAN  
Assistant Attorney General  
Public Access Bureau

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cc: Dr. Carla Cumblad  
Executive Director  
Mid-Valley Special Education Cooperative  
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