



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

January 26, 2016

*Via electronic mail*

Mr. Bob Anderson  
5515 East Lake Shore Drive  
Wonder Lake, Illinois 60097  
thebobberwl@gmail.com

*Via electronic mail*

Mr. Scott Hartman  
Deputy County Administrator  
County of McHenry  
McHenry County Government Center  
2200 North Seminary Avenue  
Woodstock, Illinois 60098  
SEHartman@co.mchenry.il.us

RE: OMA Request for Review – 2015 PAC 38824

Dear Mr. Anderson and Mr. Hartman:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons that follow, the Public Access Bureau concludes that the McHenry County Board (Board) improperly permitted two Board members to participate in its October 6, 2015, meeting by telephone.

On December 1, 2015, the Public Access Bureau received a Request for Review from Mr. Bob Anderson alleging that the Board improperly allowed Board Members Mary McCann and Michele Aavang to participate in its October 6, 2015, meeting by telephone. Mr. Anderson stated that Ms. McCann left the meeting early for a vacation and that Ms. Aavang was out of town on a business trip. The Public Access Bureau construed Mr. Anderson's Request for Review as alleging potential violations of section 7(a) of OMA (5 ILCS 120/7(a) (West 2014)), which provides:

Mr. Bob Anderson  
Mr. Scott Hartman  
January 26, 2016  
Page 2

If a quorum of the members of the public body is physically present \* \* \*, a majority of the public body may allow a member of that body to attend the meeting by other means if the member is prevented from physically attending because of: (i) personal illness or disability; (ii) employment purposes or the business of the public body; or (iii) a family or other emergency. "Other means" is by video or audio conference.

On December 4, 2015, this office forwarded a copy of the Request for Review to the Board and asked it to address whether the Board reasonably believed that Ms. McCann met one of the conditions set forth in section 7(a) of OMA to attend the meeting by telephone, as well as whether the Board acted pursuant to its rules when it permitted her to do so. On December 23, 2015, the Board responded first by stating that it had not received the copy of the Request for Review that we had sent until December 14, 2015, due to a technological error. The Board then stated that Ms. McCann was present at the meeting location for the Board's debate on a township consolidation matter, but that when she had to leave for her vacation, the Board voted to allow her to continue to participate in the meeting by telephone. The Board "acknowledge[d] that vacation is not a reason to allow a call in."<sup>1</sup> Yet, the Board stated that without Ms. McCann's remote "nay" vote, the consolidation measure still would have failed.

On January 8, 2016, this office received Mr. Anderson's reply claiming that Ms. McCann's vote should be nullified because she was not eligible to vote remotely. Mr. Anderson also questioned whether Ms. Aavang had provided advance notice of her intention to attend the meeting by telephone to the Board's recording secretary or clerk. Section 7(b) of OMA (5 ILCS 120/7(b) (West 2014)) provides that "[i]f a member wishes to attend a meeting by other means, the member must notify the recording secretary or clerk of the public body before the meeting unless advance notice is impractical."

On January 11, 2016, an attorney in the Public Access Bureau asked the Deputy County Administrator by e-mail whether either Ms. McCann or Ms. Aavang had notified the Board's recording secretary or clerk in advance of the meeting that they intended to participate in the meeting by telephone. On January 21, 2016, the Deputy County Administrator replied that neither the recording secretary nor the clerk had received such advance notice, and he did not assert that advance notice was impractical to provide.

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<sup>1</sup>Letter from Scott Hartman, Deputy County Administrator, County of McHenry, to Josh Jones, Public Access Bureau, Office of the Illinois Attorney General (December 23, 2015).

Mr. Bob Anderson  
Mr. Scott Hartman  
January 26, 2016  
Page 3

### DETERMINATION

The Board's response to this office acknowledged that Ms. McCann's reason for wanting to vote by telephone during the Board's October 6, 2015, meeting did not meet one of the three specific exceptions to physical presence set forth in section 7(a) of OMA. Section 7(c) of OMA provides that "[a] majority of the public body may allow a member to attend a meeting by other means only in accordance with and to the extent allowed by rules adopted by the public body. The rules must conform to the requirements and restrictions of this Section[.]" Under the plain language of section 7(c), the Board did not have the discretion to permit Ms. McCann to attend the meeting by telephone even if it had acted pursuant to rules it had adopted because allowing Ms. McCann to participate in the meeting remotely did not conform to the restrictions of section 7(a) that permit meeting attendance by video or audio conference.

It was also improper for the Board to allow Ms. Aavang to participate in the meeting by telephone; although her reason for remote participation was an employment purpose that conformed to the restrictions of section 7(a), she had not provided advance notice to the recording secretary or clerk, and the Board does not argue that it was impractical for her to have done so. Accordingly, the Board did not adhere to the express requirement of section 7(b).

The minutes of the Board's October 6, 2015, meeting show that each of the matters upon which the Board considered taking final action were adopted or defeated by a wider margin than two votes.<sup>2</sup> Because the votes of the Board members who participated in the meeting by telephone did not change the outcome of the Board's final actions, no action is required by the Board under these circumstances to remedy its violations of OMA. However, we caution the Board to ensure that it adheres to the requirements of sections 7(a), 7(b), and 7(c) of OMA when Board members wish to vote remotely in the future.

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, you may contact me at the Chicago address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,



JOSHUA M. JONES  
Supervising Attorney  
Public Access Bureau

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<sup>2</sup>McHenry County Board, Regular Meeting, October 6, 2015, Minutes 1-5.