Via electronic mail
Ms. Peggy Stortz
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peggstortz@gmail.com

Via electronic mail
Mr. Terry M. Kurt
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590 Iowa Street, Suite 2
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RE: OMA Request for Review – 2019 PAC 59856

Dear Ms. Stortz and Mr. Kurt:

This determination 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 stated below, the Public Access Bureau concludes that the Board of Trustees (Board) of the Galena Public Library District (Library) improperly took final action outside of an open meeting.

On September 24, 2019, Ms. Peggy Stortz submitted a Request for Review alleging that the Board violated OMA by agreeing to terminate the employment of the custodian of the Library outside of an open meeting in violation of OMA. On September 30, 2019, this office forwarded a copy of Ms. Stortz's Request for Review to the Board and asked it to provide this office with a detailed written response. On December 30, 2019, Mr. Terry M. Kurt, counsel for the Board, responded on its behalf. Mr. Kurt also provided for this office's confidential review copies of the verbatim recordings of the closed portions of the Board's August 12, 2019, meeting and August 26, 2019, special meeting, and the agendas and minutes for the July 16, 2019, August 12, 2019, August 26, 2019, and September 9, 2019, meetings, as well as a copy of the Library's bylaws, which were in effect on September 4, 2019, the day the custodian was terminated. On January 6, 2020, Ms. Stortz replied.
On March 2, 2020, this office asked the Board's for further information regarding the termination of the custodian; Mr. Kurt provided that information the following day. This office forwarded that information to Ms. Stortz; on March 16, 2020 she replied.

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).

As an initial matter, Ms. Stortz alleged that the Board violated the Library's bylaws, a California statute, the Ralph M. Brown Act (Cal. Gov't Code § 54957(b)(2) (West 2018)), and the right to due process of law. Those allegations are not subject to review by this office. See 15 ILCS 205/7(c)(3) (West 2018) (limiting the Public Access Counselor's authority to reviewing alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 et seq. (West 2018)). Therefore, our determination in this matter is limited to whether the Board violated OMA.

Section 2(e) of OMA

Section 2(e) of OMA (5 ILCS 120/2(e) (West 2018)) provides that "[n]o final action may be taken at a closed meeting. Final action shall be preceded by a public recital of the nature of the matter being considered and other information that will inform the public of the business being conducted." While a public body may reach preliminary consensus or take a preliminary vote in a closed session, a public body must take all final actions in an open meeting. Board of Education of Springfield School District No. 186 v. Attorney General of Illinois, 2017 IL 120343, ¶¶ 73-74, 77 N.E.3d 625, 637 (2017). In other words, when a public body finalizes a decision, that final action must be taken openly. See Howe v. Retirement Bd. of Firemen's Annuity & Benefit Fund of Chicago, 2013 IL App (1st) 122446, ¶26, 996 N.E.2d 664, 974-75 (2013) (finding board's written denial of benefits invalid because the board had circulated the decision for signatures privately rather than voting on it in open session); Lawrence v. Williams, 2013 IL App (1st) 130757, ¶21, 988 N.E.2d 1039, 1043-44 (2013) (finding electoral board's written decision null and void because the decision was not made by a quorum in an open meeting).

This office has reviewed the information submitted by Ms. Stortz and the Board, and has listened to the verbatim audio recordings of the August 12, 2019, and August 26, 2019, closed meetings. The Board acknowledged to this office that (1) it came to a consensus in closed
session about what action the Board should take regarding the termination of the custodian,\(^1\) (2) the Board did not vote in an open session to fire the custodian,\(^2\) and (3) the president of the Board terminated the custodian's employment on September 4, 2019, accompanied by the Board vice president, Ms. Maria Rector.\(^3\) Based on the information provided by the Board and this office's review of the August 26, 2019, closed session, it is clear that the Board reached a consensus to terminate the custodian in a closed session. The Board has not asserted that this decision was subsequently ratified at an open meeting after the Board provided proper advance notice, a public recital of its final action, and otherwise complied with the requirements of OMA. Further, the Board president implemented the Board's decision to terminate the custodian on September 4, 2019, when he fired the custodian in the company of the Board vice president.

The Board, however, contends that its president was authorized to fire the custodian without a vote in open session because in the absence of a library director, the management of staff, including terminating an employee, fell to the Board president.\(^4\) Ms. Stortz replied that the Board's bylaws only give the Board the authority to hire, evaluate, or terminate the library director.

The question of whether the Library's bylaws authorize the Board president to terminate the custodian or whether he exceeded his authority by doing so is not governed by OMA and, therefore, is not subject to review by this office. As discussed above, OMA prohibits public bodies from taking final action in closed session, and this office's review of the August 26, 2019, closed session recording belies the assertion that the Board president acted unilaterally. Instead, it is apparent that the Board reached a consensus in closed session to terminate the custodian, and that the Board president implemented that decision by discharging the custodian. Accordingly, this office concludes that the Board violated section 2(e) of OMA by taking final action in closed session.

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\(^2\)E-mail from Terry M. Kurt, Hammer Law Firm, P.L.C., to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau] (March 3, 2020).

\(^3\)E-mail from Terry M. Kurt, Hammer Law Firm, P.L.C., to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau] (March 3, 2020).

\(^4\)E-mail from Terry M. Kurt, Hammer Law Firm, P.L.C., to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau] (March 3, 2020).
In accordance with the conclusions expressed above, this office requests that the Board remedy its violation of OMA by reconsidering and taking final action concerning the employment of the custodian during an open meeting in which it fully complies with the requirements of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me at (312) 814-5201 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,

EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau