



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

December 10, 2021

*Via electronic mail*

Mr. Christopher Hansen  
[REDACTED]

*Via electronic mail*

The Honorable Rickey Williams, Jr.  
Mayor  
City of Danville  
17 West Main Street  
Danville, Illinois 61832  
mayor@cityofdanville.org

RE: OMA Request for Review – 2021 PAC 67737

Dear Mr. Hansen and Mr. Williams:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

**BACKGROUND**

On April 6, 2021, Mr. Christopher Hansen submitted a Request for Review to the Public Access Bureau alleging that the City Council (City Council) of the City of Danville (City) violated the requirements of section 7(e) of OMA (5 ILCS 120/7(e) (West 2020)) in connection with its February 16, 2021, March 2, 2021, and March 16, 2021, meetings, which were conducted virtually. Specifically, he alleged that: (1) "At all three meetings, it is not apparent that the head of the public body has declared a state of disaster which would require a virtual meeting[;]" (2) "At the February 16<sup>th</sup> meeting, there does not appear to be any member of the public body physically present at the City Building[;]" and (3) "At all three meetings, Mayor Williams, on numerous occasions, instructed the Council to take votes by having the entire Council voice 'ayes' and 'nays' at the same time, rather than by taking roll call votes."<sup>1</sup>

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<sup>1</sup>E-mail from Christopher Hansen to Public Access Counselor [Sarah] Pratt (April 6, 2021).

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On June 9, 2021, this office forwarded a copy of the Request for Review to the City Council and asked it to provide this office with a written response to Mr. Hansen's OMA allegations and copies of the meeting agendas, minutes, and verbatim recordings of the three specified meetings. On June 15, 2021, this office received the requested materials, including links to verbatim recordings of the three meetings posted on YouTube. On June 16, 2021, this office forwarded a copy of the City Council's response to Mr. Hansen; he did not reply.

### **DETERMINATION**

It is "the public policy of this State that its citizens shall be given advance notice of and the right to attend all meetings at which any business of a public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2020). "The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989). Section 7(e) of OMA permits a public body to hold a meeting remotely because of a public health emergency, so long as certain conditions are met.

In its response to this office, the City Council denied Mr. Hansen's allegation that it failed to meet the condition in section 7(e)(2) of OMA (5 ILCS 120/7(e)(2) (West 2020)) that "the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act [FOIA] determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster[.]" On September 14, 2021, this office asked the City's Corporation Counsel, James Simon, whether the mayor had made such a determination. In response, Mr. Simon clarified that the mayor had issued an initial local state of emergency related to COVID-19, on March 17, 2020; the declaration was codified in City Ordinance No. 9254. He explained that the mayor and City Council subsequently determined that continuing to hold meetings remotely was prudent, consistent with the prior declaration and the Governor's periodic extensions permitting municipalities to conduct meetings remotely in light of the pandemic. Mr. Simon highlighted that the meeting agendas up until the City Council's July 6, 2021, meeting referenced that meetings would be audio livestreamed and public comment conducted remotely. The agendas for the three meetings at issue stated that the meetings would be held by teleconference and provided information on how to hear the meeting's audio livestream. For each of the meetings, the minutes also noted that "[d]ue to Coronavirus, COVID-19 the meeting was conducted in a combination of in person and virtual attendance through audio/video access using a virtual meeting platform to maintain social distancing during the duration of the Gubernatorial Disaster Proclamation and Public Act 101-0640."<sup>2</sup> Additionally, Mr. Simon directed this office to the minutes of the City Council's June

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<sup>2</sup>See, for example, Danville City Council, Meeting, March 16, 2021, Minutes 1.

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15, 2021, meeting, which reflect that the City Council discussed whether to return to in-person meetings starting the following month and had considered health and safety concerns related to returning to in-person meetings.

Although Mr. Hansen contended that the head of the City, Mayor Rickey Williams, had not declared a state of disaster at the time of the meetings at issue, section 7(e)(2) requires a determination, not a declaration or formal announcement, that an in-person meeting is not practical or prudent. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 66398, issued February 1, 2021, (taking no further action on a request for review alleging that a village did not publicly declare an emergency in accordance with section 7(e)(2) where the village indicated in its meeting agenda that the meeting would be held remotely due to an ongoing public health emergency). The available information indicates that the mayor and City Council determined that fully in-person meetings were not prudent for each of the meetings at issue. The meetings' minutes indicated that the City Council conducted the three meetings virtually because of COVID-19 and limited physical attendance pursuant to the Governor's disaster proclamation and Public Act 101-0640, which enacted section 7(e) of OMA. The agendas also notified the public that the meetings would be conducted virtually and appeared to address the circumstances caused by the pandemic by noting that it was making "best efforts during this difficult time to be compliant with the Open Meetings Act."<sup>3</sup> Accordingly, based on the available information, this office is unable to conclude that the City Council violated section 7(e)(2) of OMA.

The City Council also asserted that its February 16, 2021, meeting complied with section 7(e)(5) of OMA (5 ILCS 120/7(e)(5) (West 2020)), which requires that "at least one member of the body, chief legal counsel, or chief administrative officer is physically present at the regular meeting location, unless unfeasible due to the disaster, including the issued disaster declaration[.]" The City Council explained that "the building was closed to all persons given the severity of the weather[ ]"<sup>4</sup> and, therefore, it was not feasible for any members to physically attend the meeting. The February 16, 2021, meeting was held virtually not only because of the pandemic but also because of hazardous weather conditions. Although for practical reasons and the convenience of not having to cancel the meeting entirely it is understandable that the City Council members all attended remotely, section 7(e)(5) requires the physical presence of one of the named persons "unless unfeasible **due to the disaster**." (Emphasis added.) There is no exception to the requirement that one person physically attend the meeting if the building was closed because of inclement weather rather than the disaster. Accordingly, the City Council has

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<sup>3</sup>*See, for example*, Danville City Council, Public Notice and Agenda (February 16, 2021).

<sup>4</sup>Letter from James L. Simon, Corporation Counsel, City of Danville, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 15, 2021), at 4.

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not demonstrated that it was unfeasible under section 7(e)(5) to require some physical attendance by its members or city employees at the February 16, 2021, meeting.

Section 7(e)(6) of OMA (5 ILCS 120/7(e)(6) (West 2020)) requires that "**all votes are conducted by roll call**, so each member's vote on each issue can be identified and recorded." (Emphasis added.) Although not defined in OMA, a roll call vote is commonly understood to mean that at the time of voting, each public body member's name is called and that individual's vote is publically disclosed. A voice vote, by contrast, is a practice in which at the time of voting, all members in favor signal their affirmative approval simultaneously and then all those against the motion signal their disapproval simultaneously. The City Council contended that during the relevant meetings, "all substantive action items were voted upon by roll call votes."<sup>5</sup> The City Council acknowledged that not all of its votes were taken by roll call vote, but argued that "[t]he only items that were voted upon by simple voice vote were procedural in nature[.]" such as motions to approve a prior meeting's minutes and to approve an agenda.<sup>6</sup> Additionally, the City Council argued that the simple voice votes were all unanimous and, therefore, "members of the public knew how each Council member voted."<sup>7</sup>

This office's review of the minutes for the meetings confirmed that the City Council voted on certain items, such as the approval of prior meeting minutes, by voice vote. While those items may not have required substantive discussions by the City Council's members prior to the votes, the plain language of section 7(e)(6) requires all votes to be conducted by roll call and does not make an exception for votes on procedural matters. Because it is undisputed that the City Council voted on some agenda items by voice votes rather than roll call votes, this office concludes that the City Council violated section 7(e)(6) of OMA. No remedial action is required, however, because the matters on which the City Council took voice votes were unanimous. Therefore, the votes of each City Council member are apparent. This office nonetheless reminds the City Council to take roll call votes for all matters subject to a vote at future meetings held remotely pursuant to section 7(e) of OMA.

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<sup>5</sup>Letter from James L. Simon, Corporation Counsel, City of Danville, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 15, 2021), at 4.

<sup>6</sup>Letter from James L. Simon, Corporation Counsel, City of Danville, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 15, 2021), at 4.

<sup>7</sup>Letter from James L. Simon, Corporation Counsel, City of Danville, to Teresa Lim, Assistant Attorney General, Public Access Bureau (June 15, 2021), at 4.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,



TERESA LIM  
Assistant Attorney General  
Public Access Bureau

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cc: *Via electronic mail*  
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