



Rickey Williams, Jr., Mayor

June 15, 2021

Teresa Lim
Assistant Attorney General
Public Access Bureau

VIA E-MAIL: Lorraine.Dunham@Illinois.gov

Re: OMA Request for Review – 2021 PAC 67737.

Dear Ms. Lim:

The City of Danville ("City") acknowledges receipt of your further action letter dated June 9, 2021 (2021 PAC 67737) and Christopher Hansen's ("Hansen") Open Meetings Act ("OMA") complaint regarding the City of Danville City Council meetings of February 16, March 2 and March 16, 2021. The City's response is provided below.

Requested Materials: Per your request, I provide the agendas and the minutes for the February 16, March 2 and March 16, 2021 meetings respectively. The videos and audios of those meetings can be found on YouTube at the following links:

- February 16, 2021 meeting: <https://www.youtube.com/watch?v=EYkdvG3KZbk>
- March 2, 2021 meeting: <https://www.youtube.com/watch?v=6eMKsQpvDFI>
- March 16, 2021 meeting: <https://www.youtube.com/watch?v=QBh0JR0rXeE>

Hansen's Complaint:

Hansen essentially alleges:

1. At all three meetings, the Mayor had not declared a state of disaster allowing for a virtual meeting.
2. At the February 16, 2021 meeting, no member of the City Council or the Mayor was physically present at the City Building during the meeting.
3. At all three meetings, roll call votes were taken to approve prior meeting minutes, the agendas, a treasurer's report, and returning to open session following conclusion of a closed session.

Issue No. 1: Failure to Declare State of Disaster in Order to Call a Virtual Meeting.

You have not requested the City to respond to this allegation. However, it is worth noting that on two occasions the PAC rejected Hansen's complaint on essentially this same issue. See,

2020 PAC 63073 and 2020 PAC 63284, both issued on June 17, 2020. Hansen does not even suggest that Governor Pritzker, at the time of the three meetings about which Hansen now complains, lifted his emergency declaration insofar as it relates to meetings of public bodies.

Issue No. 2: The February 16, 2021 Meeting Fully Complied with OMA Section 7(e).

Hansen is correct that neither the Mayor, nor any City Council member, or the City's Corporation Counsel were present in the City Building for the February 16, 2021 City Council meeting. This was due to the fact that on February 15, 2021, the Mayor issued a press release announcing that:

Due to continued dangerously low temperatures and an onslaught of additional hazardous snow conditions, all City Buildings will be closed tomorrow, Tuesday, February 16, 2021.

The City Council meeting will still meet electronically at 6PM as scheduled, and the meeting can be viewed live by clicking on the link on our homepage (www.cityofdanville.org).

See Exhibit included herewith.

OMA Section 7(e) states:

Subject to the requirements of Section 2.06 but notwithstanding any other provision of law, an open or closed meeting subject to this Act may be conducted by audio or video conference, without the physical presence of a quorum of the members, so long as the following conditions are met:

(1) the Governor or the Director of the Illinois Department of Public Health has issued a disaster declaration related to public health concerns because of a disaster as defined in Section 4 of the Illinois Emergency Management Agency Act, and all or part of the jurisdiction of the public body is covered by the disaster area;

(2) the head of the public body as defined in subsection (e) of Section 2 of the Freedom of Information Act determines that an in-person meeting or a meeting conducted under this Act is not practical or prudent because of a disaster;

(3) all members of the body participating in the meeting, wherever their physical location, shall be verified and can hear one another and can hear all discussion and testimony;

(4) for open meetings, members of the public present at the regular meeting location of the body can hear all discussion and testimony and all votes of the members of the body, unless attendance at the regular meeting location is not feasible due to the disaster, including the issued disaster declaration,

in which case the public body must make alternative arrangements and provide notice pursuant to this Section of such alternative arrangements in a manner to allow any interested member of the public access to contemporaneously hear all discussion, testimony, and roll call votes, such as by offering a telephone number or a web-based link;

(5) 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; and

(6) all votes are conducted by roll call, so each member's vote on each issue can be identified and recorded.

(7) Except in the event of a bona fide emergency, 48 hours' notice shall be given of a meeting to be held pursuant to this Section. Notice shall be given to all members of the public body, shall be posted on the website of the public body, and shall also be provided to any news media who has requested notice of meetings pursuant to subsection (a) of Section 2.02 of this Act. If the public body declares a bona fide emergency:

(A) Notice shall be given pursuant to subsection (a) of Section 2.02 of this Act, and the presiding officer shall state the nature of the emergency at the beginning of the meeting.

(B) The public body must comply with the verbatim recording requirements set forth in Section 2.06 of this Act.

(8) Each member of the body participating in a meeting by audio or video conference for a meeting held pursuant to this Section is considered present at the meeting for purposes of determining a quorum and participating in all proceedings.

(9) In addition to the requirements for open meetings under Section 2.06, public bodies holding open meetings under this subsection (e) must also keep a verbatim record of all their meetings in the form of an audio or video recording. Verbatim records made under this paragraph (9) shall be made available to the public under, and are otherwise subject to, the provisions of Section 2.06.

(10) The public body shall bear all costs associated with compliance with this subsection (e).

5 ILCS 120/7(e), emphasis supplied.

The City properly and fully complied with each of OMA Section 7(e)'s requirements.

1. The preamble to OMA Section 7 clearly recognizes that the Governor of the State of Illinois issued a disaster declaration concerning COVID-19 that was in effect on February 16, 2021. Indeed, the PAC has issued a number of opinions recognizing such actions vis-à-vis COVID-19. E.g., 2020 PAC 63073 and 2020 PAC 63284.
2. The Mayor's February 15, 2021 press release quoted above clearly demonstrates that he declared that an in-person meeting was neither practical nor prudent given the severity of the weather.
3. The video for the February 16, 2021 meeting demonstrates that a quorum of the City Council was present and that they and the public could hear the Mayor and each Council member when they spoke.
4. Given the Mayor's closing of the City Building for February 16, 2021 to all persons, it was not feasible for any member of the public to attend the meeting in person. Again, the video demonstrates that members of the public could watch the meeting live as they had been doing for the prior nine (9) months under COVID-19 pandemic conditions and Governor Pritzker's disaster declarations relative thereto that are listed in the preamble to OMA Sections 2.01 and 7. 5 ILCS 120/2.01, 7.
5. Again, it was not feasible for a City Council member, the City's Corporation Counsel and/or the Mayor (as chief administrative officer) to attend the meeting in person in the City Building. As previously stated, the building was closed to all persons given the severity of the weather. Further, on the date of the meeting, the Corporation Counsel position with the City was vacant and the undersigned was merely an invited guest.
6. As the video of the meeting demonstrates, all substantive action items were voted upon by roll call votes. The only items that were voted upon by simple voice vote were procedural in nature – i.e., motions to approve the prior meeting's minutes, approve the agenda, come out of closed session, and to adjourn the meeting. In those cases, the votes were unanimous. Thus, members of the public knew how each Council member voted.
7. Clearly, the snow and severe cold weather event did not allow for the otherwise requisite 48-hour advance notice of the change in meeting plans. However, the public was in no way impacted by such change since meetings of the City Council and its two committees had been conducted in the exact same manner as was the February 16, 2021 meeting – i.e., via remote on YouTube with submission of public comment by 4:30 p.m. on the day of the meeting. Moreover, the video shows that the meeting met the video requirement of Subsection 7(e)(7).
8. Again, the video of the February 16, 2021 meeting shows that there was a quorum present. The City Council is comprised of 14 alderpersons and 11 alderpersons were present. At that time two Council members were absent and there was one vacancy.
9. The video of the February 16, 2021 meeting complies with OMA Section 7(e)(9) – the requirement for a verbatim audio recording of the meeting.

10. The City bore all costs of conducting the February 16, 2021 City Council meeting. Again, it's worth noting, from the public's perspective, the meeting was conducted no differently than the City had been conducting City Council and City Council committee meetings during the prior nine months under the continuing COVID-19 pandemic.

Clearly, the February 16, 2021 City Council meeting satisfied all requirements of OMA Section 7(e) and its subsections. 5 ILCS 120/7(e).

Issue No. 3: The City Council's March 2 and 16, 2021 Meetings Complied with the Open Meetings Act.

Hansen's own allegations demonstrate that all votes on substantive action items were taken by roll call vote. The only items that Hansen identifies as improper – i.e., not by roll call vote – were procedural items including approval of agendas; approval of meeting minutes; a Treasurer's report; and returning from a closed session. It is worth noting that the items Hansen identifies in which voice, rather than roll call, votes were taken were adopted unanimously.

CONCLUSION

For the reasons discussed above and as demonstrated through the links to City Council meetings and the exhibits included with this response, the City did not violate the Open Meetings Act in connection with the February 16, March 2, and March 16 City Council meetings.

Respectfully submitted,

James L. Simon

James L. Simon, Corporation Counsel

cc: Rickey Williams, Jr., Mayor