



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

September 30, 2022

PUBLIC ACCESS OPINION 22-012
(Request for Review 2022 PAC 72503)

OPEN MEETINGS ACT:
Improper Closed Session Discussion of New
School Under the Exception for Purchasing or
Leasing Real Property

Mrs. Lee Ann Clary
605 South Crea Street
Decatur, Illinois 62522

The Honorable Andrew Taylor
President, Board of Education
Decatur Public Schools
Keil Administration Building
101 West Cerro Gordo Street
Decatur, Illinois 62523

Dear Mrs. Clary and Mr. Taylor:

This binding opinion is issued by the Attorney General pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons discussed below, this office concludes that the Board of Education (School Board) of Decatur Public School District No. 61 (District) violated section 2(a) of OMA (5 ILCS 120/2(a) (West 2021 Supp.)) during 16 separate meetings held between October 12, 2021, and June 28, 2022. During these meetings, the School Board improperly entered closed session pursuant to the exception in section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2021 Supp.)) and discussed various aspects of opening a new school using COVID-19 relief funds.

BACKGROUND

On July 6, 2022, Mrs. Lee Ann Clary submitted a Request for Review to the Public Access Bureau alleging that in recent months the School Board may have improperly engaged in private discussions concerning the building of a new grade school.¹ She stated that she became aware of the potential violations on June 29, 2022, after the School Board and the Decatur Park District Board (Park Board)² announced on June 27, 2022, that they were considering the construction of a new school building in Lincoln Park.³ The announcement stated that on April 19, 2022, the General Assembly granted⁴ the District a waiver to build a new school using Federal pandemic relief funds⁵ totaling more than \$76,000,000.⁶ Mrs. Clary appeared to assert, however, that no agenda items of School Board meetings indicated that the School Board discussed or voted on that waiver, nor did any minutes indicate that the School Board discussed building a new school at all.⁷ Mrs. Clary posited that the School Board may have improperly discussed the matter in closed session pursuant to section 2(c)(5) of OMA (5 ILCS 120/2(c)(5) (West 2021 Supp.)), as the only potentially relevant information she discovered in reviewing meeting agendas is that the School Board adjourned to closed session to discuss purchasing or leasing land.⁸

¹Letter from Lee Ann Clary to Illinois Attorney General OAG FOIA Officer, Office of Attorney General (dated July 5, 2022; transmitted via e-mail July 6, 2022).

²On July 11, 2022, a Deputy Bureau Chief in the Public Access Bureau called Mrs. Clary to clarify if she also sought review of the actions of the Park Board and Decatur City Council, as she mentioned those public bodies in her allegations, too. Mrs. Clary stated that she sought review of only the School Board's conduct at that time.

³Valerie Wells, *Decatur Public Schools exploring new school in Lincoln Park*, HERALD & REVIEW (June 27, 2022), https://herald-review.com/news/local/education/decatur-public-schools-exploring-new-school-in-lincoln-park/article_857c4d6e-f658-11ec-a5fa-9fb2a5ee20d1.html.

⁴Referencing Public Act 102-699, which was signed into law on April 19, 2022. Some provisions of the Public Act took effect upon passage, but the part concerning the District did not take effect until July 1, 2022.

⁵Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, 134 Stat. 281 (codified as amended in scattered sections of 2, 5, 12, 15, 20, 21, 29, 42, and 45 U.S.C.).

⁶Valerie Wells, *Decatur Public Schools exploring new school in Lincoln Park*, THE HERALD-REVIEW (June 27, 2022), https://herald-review.com/news/local/education/decatur-public-schools-exploring-new-school-in-lincoln-park/article_857c4d6e-f658-11ec-a5fa-9fb2a5ee20d1.html.

⁷Letter from Lee Ann Clary to Illinois Attorney General OAG FOIA Officer, Office of Attorney General (dated July 5, 2022; transmitted via e-mail July 6, 2022), at 1.

⁸Letter from Lee Ann Clary to Illinois Attorney General OAG FOIA Officer, Office of Attorney General (dated July 5, 2022; transmitted via e-mail July 6, 2022), at 1.

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On July 18, 2022, the Public Access Bureau sent a copy of the Request for Review to the School Board President at that time, Mr. Dan Oakes. The Public Access Bureau also sent Mr. Oakes a letter asking for copies of the minutes and audio or video recordings of any meetings, open or closed, in which a majority of a quorum of the School Board discussed the potential construction of the new school, noting that this office would keep the closed session materials confidential.⁹ This office also asked the School Board to respond in writing to the allegation that it violated OMA by discussing the potential construction of a new school outside of open session, including by addressing whether deliberating about building the school exceeded the scope of section 2(c)(5) of OMA.¹⁰

On August 10, 2022, counsel for the School Board provided the Public Access Bureau with those materials, including copies of closed session minutes and closed session verbatim recordings from the following meetings: October 12, 2021; October 26, 2021; November 16, 2021; December 14, 2021; January 13, 2022;¹¹ January 25, 2022; February 8, 2022; February 22, 2022; March 8, 2022; March 22, 2022; April 12, 2022; April 26, 2022; May 10, 2022; May 24, 2022; June 14, 2022; and June 28, 2022; and the open session recording from that most recent meeting. In a written answer to Mrs. Clary's allegations, counsel for the School Board denied that it had violated OMA.¹²

On August 11, 2022, this office forwarded a copy of the School Board's response letter to Mrs. Clary.¹³ On August 16, 2022, she submitted a reply, reiterating her concerns.¹⁴

⁹Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Dan Oakes, President, Board of Education, Decatur Public Schools (July 18, 2022), at 2.

¹⁰Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to The Honorable Dan Oakes, President, Board of Education, Decatur Public Schools (July 18, 2022), at 2.

¹¹The School Board provided a copy of the closed session verbatim recording but not the closed session minutes for the January 13, 2022, meeting.

¹²Letter from Christine G. Christensen, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 10, 2022).

¹³Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Lee Ann Clary (August 11, 2022).

¹⁴Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, [2022]).

On September 4, 2022, this office extended the time within which to issue a binding opinion by 21 business days, to October 4, 2022.¹⁵

ANALYSIS

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 2020).

Authority for Review

As an initial matter, although the School Board has not objected to the scope of this review,¹⁶ this office notes that section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) authorizes the Public Access Counselor to review the allegations in Mrs. Clary's Request for Review from its October 12, 2021, meeting through the date of the submission of Mrs. Clary's Request for Review. Section 3.5(a) of OMA provides, in relevant part:

A person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation. **If facts concerning the violation are not discovered within the 60-day period, but are discovered at a later date, not exceeding 2 years after the alleged violation, by a person utilizing reasonable diligence, the request for review may be made within 60 days of the discovery of the alleged violation.** (Emphasis added.)

Although twelve of the sixteen meetings at issue during which the School Board discussed a potential new school and related issues occurred more than 60 days prior to the filing of Mrs. Clary's Request for Review, a person using reasonable diligence would not have been able to discover facts concerning the alleged improper closed-door decision-making process about the new school and its funding because the School Board held the deliberations in closed session. Further, the School Board made no mention of the potential new school in open session

¹⁵Letter from Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General, to Lee Ann Clary and Christine G. Christensen, Miller, Tracy, Braun, Funk & Miller, Ltd (September 4, 2022).

¹⁶In fact, in its written response to this Request for Review, the School District identified the October 12, 2021, meeting as the first meeting where a new school, along with location and funding, was discussed, and provided documentation concerning that and 15 subsequent meetings. Further, the School Board has not suggested that the alleged violations could have been discovered earlier.

until its June 28, 2022, meeting.¹⁷ The legislation Mrs. Clary referenced that would have enabled the District to build a new school with CARES Act funds could have been discovered within the 60 days after it was enacted on April 19, 2022, because the text of each Public Act is posted on the General Assembly's website.¹⁸ However, the bill did not mention the District until Senate Floor Amendment 1 passed on April 9, 2022, and the provision concerning the District comprises just one sentence out of the hundreds of pages of the wide-ranging FY2023 Budget Implementation Act. Mrs. Clary alleged that the legislation passed "without specific comment by legislators or in the press[.]"¹⁹ and this office has not received information to the contrary.²⁰ More importantly, because nothing in its meeting agendas or minutes indicated that the School Board was considering a new school or how to fund it, a person using reasonable diligence in following School Board business would have had no reason to search for the related legislation. Thus, it would have required significantly more than reasonable diligence to discover the alleged violations prior to the School Board's announcement of the plans on June 27, 2022, as reported by the news media. Because Mrs. Clary's July 6, 2022, Request for Review was submitted within 60 days after her discovery of the alleged violations, this office has the authority to review all of the School Board meetings at issue in her allegations.

Section 2(a) of OMA

Turning to the substance of Mrs. Clary's allegations, section 2(a) of OMA (5 ILCS 120/2(a) (West 2021 Supp.)) provides that "[a]ll meetings of public bodies shall be open to the public unless excepted in subsection (c) and closed in accordance with Section 2a." Such exceptions "are in derogation of the requirement that public bodies meet in the open, and therefore, the exceptions are to be **strictly construed, extending only to subjects clearly within their scope.**" (Emphasis added.) 5 ILCS 120/2(b) (West 2021 Supp.). The section 2(c)(5) exception permits a public body to enter into closed session to discuss only "[t]he purchase or

¹⁷Decatur Public School District No. 61 Board of Education, Meeting, June 28, 2022, Minutes 3 (Superintendent Rochelle Clark read the joint statement between the School Board and Park Board making the announcements).

¹⁸Illinois General Assembly, 102nd General Assembly Public Acts, <https://www.ilga.gov/legislation/publicacts/default.asp> (last visited September 20, 2022).

¹⁹Letter from Lee Ann Clary to [Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, Office of the Attorney General] (undated; sent by e-mail July 14, 2022).

²⁰One of the questions posed in the Frequently Asked Questions document posted by the District after it announced the plans for the new school on June 27, 2022, is: "Why has this been kept quiet for so long?" Decatur Public School District No. 61, *FREQUENTLY ASKED QUESTIONS: Proposed New School*, https://docs.google.com/document/d/151WBZPO_Xz1MkOh95uOPln7oI4WvEIhEUIZxHbsP_UY/edit (last visited September 20, 2022).

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lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired."

In its response to this office, counsel for the School Board explained the events documented by the closed session materials:

Beginning on October 12, 2021, the Board of Education began discussing possible real estate sites that could be acquired and upon which a new school could be built. Over the next several months, the Board of Education evaluated multiple sites, including sites proposed by the City of Decatur and/or owned by the Decatur Park District.^[21]

The School Board analogized this matter to an Illinois Appellate Court decision, *Galena Gazette Publications, Inc. v. County of Jo Daviess*, 375 Ill. App. 3d 338, 344-45 (2d Dist. 2007). The School Board argued:

Like in *Galena Gazette Publications, Inc.*, the Board of Education's discussions of the real estate sites proposed by the City and/or owned by the Park District were crucial to the Board's strategy in deciding whether to proceed with the purchase or lease of real property for the construction of a new school. The Board of Education similarly needed to discuss "whether and on what terms the [District] out to sublet" or buy property from the Park District. [Citation.] The Board of Education also needed to consider how much it "would pay [and] how much space the [new building] would occupy[.] ... The participants also discussed whether it was desirable to enter into the arrangement at all, what alternatives existed, and how the [District and the Park District] could arrive at an agreement of some sort." [Citation.] These discussions, as confirmed by the Second District Appellate Court of Illinois, are permissible during a closed session meeting of a public body under the Open Meetings Act. Accordingly, no violation of the Open Meetings Act occurred.^[22]

²¹Letter from Christine G. Christensen, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau (August 10, 2022), at 2.

²²Letter from Christine G. Christensen, Miller, Tracy, Braun, Funk & Miller, Ltd., to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 10, 2022), at 3.

Mrs. Clary replied to that argument by identifying "deliberations and decisions with regard to three related actions" that she alleged the School Board improperly undertook outside of open session:

1. The decision to pursue construction of a new building.
2. The decision to at least partially fund the building with ARP ESSER^[23] funds already allocated to [the District].
3. The decision to obtain a waiver of referendum from the state legislature to raise up to half the cost of any building partially funded with ARP ESSER funds.^[24]

Mrs. Clary noted that the School Board "does not claim to have held any discussions or made any decisions" regarding those three subjects "in [an] open meeting."²⁵ She contended that the School Board exceeded the scope of section 2(c)(5) because its closed session "[d]iscussions of 'whether and how a specific property would meet the needs of the District' were **separately preceded by and independent of** discussions and a decision to pursue building and funding a new school building." (Emphasis in original.)²⁶ Asserting that "it is common practice and according to Illinois law to pursue building and funding a new school building in the open and to require public approval via referendum[.]" Mrs. Clary alleged that the School Board took action to get the referendum requirement removed via legislation "without public knowledge or approval."²⁸ As referenced above, Public Act 102-699, effective July 1, 2022, amended section 10-22.36(a) of the School Code²⁹ to specifically exclude the District from the general requirement to hold a referendum to build a new school building as long as at least half the cost

²³Elementary and Secondary School Emergency Relief (ESSER) under the American Rescue Plan Act (ARPA), Pub. L. No. 117-2, tit. II, § 2001, 135 Stat. 4, 19 (2021) (codified in scattered sections of 7, 12, 15, 19, 20, 26, 29, 42, and 45 U.S.C.). The ESSER funding was established by the CARES Act.

²⁴Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, [2022]), at 1.

²⁵Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, [2022]), at 2.

²⁶Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, [2022]), at 2.

²⁸Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, [2022]), at 2.

²⁹105 ILCS 5/10-22.36(a) (West 2021 Supp.), as amended by Public Act 102-699, effective July 1, 2022.

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of the project is paid for with COVID-19 relief funds. Mrs. Clary alleged that the School Board's improper discussions and decisions concerning building a new school included secretly applying for those pandemic relief funds for that purpose. She contended the School Board "sought to conceal every aspect of the proposed new school building in question that it could from its citizens for as long as it possibly could."³⁰

This office's confidential review of each of the closed session verbatim recordings and closed session minutes from the 16 meetings at issue confirmed that the School Board exceeded the scope of section 2(c)(5) by discussing plans for the creation of a new school, funding via the CARES Act, and a legislative waiver of the statutory referendum requirement. The School Board did spend considerable time during certain meetings discussing the relative merits of particular properties to potentially acquire, as authorized by the exception in section 2(c)(5) of OMA. The School Board, however, also discussed various matters outside that narrow scope across the extended series of closed session discussions as an unavoidable consequence of planning a new school. Deliberating about opening a new school is not a legitimate topic for closed session. Neither is strategizing about obtaining and using COVID-19 aid funding, nor pursuing legislation to amend a State law to bypass a referendum requirement. Had the School Board openly discussed building a new school with pandemic relief funds and a legislative waiver of the referendum requirement, it could have properly deliberated in closed session about the narrow topic of acquiring the most beneficial parcel of property for constructing the new school. Instead, the School Board held closed session discussions over an extended period of time about plans to build a new school with COVID-19 relief funds, improperly invoking an exception to OMA's public discussion requirements that covers only the real estate acquisition aspect of that plan. The School Board's closed session deliberations about building a new school were not pertinent to an underlying consideration about buying real property; the real property-related discussions only arose because the Board first considered using the available CARES Act funding to reconfigure its schools. Thus, *Galena Gazette* is inapposite.

In *Galena Gazette*, the Illinois Appellate Court analyzed whether closed session discussions concerning subleasing a specific property for use by a public body fell within the scope of section 2(c)(5). The City of Galena had sublet the "Old Train Depot" to the Galena Area Chamber of Commerce, and Jo Daviess County's Convention & Visitors Bureau sought to lease a portion of the building. *Galena Gazette*, 375 Ill. App. 3d at 339-40. The plaintiff conceded that the involved public bodies could have properly discussed the "material terms" of the sublease in closed session under section 2(c)(5), but argued that the public bodies improperly included "peripheral matters" in the closed session discussion, such as how to utilize the subleased space. *Galena Gazette*, 375 Ill. App. 3d at 344. The court disagreed, finding that

³⁰Letter from Lee Ann Clary to Joshua M. Jones, Deputy Bureau Chief, Public Access Bureau, [Office of the Attorney General] (August 16, 2022), at 2.

nothing in the language of section 2(c)(5) distinguishes "material" lease matters from "peripheral" ones. *Galena Gazette*, 375 Ill. App. 3d at 344. Rather, the court explained, the relevant question was whether the sublease conditions discussed in closed session, such as the Chamber's racking of promotional brochures within the subleased property, were relevant considerations in determining whether to enter the sublease:

Even when participants discussed the racking of promotional brochures at the Old Train Depot— past, present, or future— they did so only because it was pertinent to the terms, effects, or desirability of the proposed subleasing arrangement. The participants did not discuss the racking of promotional literature separately from their consideration of the proposed subleasing arrangement * * *. To abstract any such discussions from the larger context would ignore the participants' purposes in raising the issue of the display of promotional materials. *Galena Gazette*, 375 Ill. App. 3d at 344.

The court added that it would be impractical for the public bodies to have a meaningful discussion of the sublease terms if they were precluded from discussing the related details needed to put the terms in context. *Galena Gazette*, 375 Ill. App. 3d at 345. Because the public bodies' closed session discussion centered on the terms and conditions of the potential sublease, and because the issues that the plaintiff characterized as "peripheral" were relevant components of those considerations, the court held that the entire closed session discussion was proper under section 2(c)(5). *Galena Gazette*, 375 Ill. App. 3d at 346.

Thus, *Galena Gazette* stands for the proposition that when the matter under consideration is a public body's interest in purchasing or leasing real property, section 2(c)(5) permits the public body to discuss the attributes of the properties under consideration and the terms and conditions of a potential sale or lease. *Galena Gazette* lends no support to the notion that section 2(c)(5) encompasses all aspects of a public body's deliberations about a new endeavor such as the creation of a new school simply because the project may require the purchase or lease of real property as one of its main elements. Indeed, the court emphasized: "We do not suggest that a public body may shelter deliberations that must be public merely by depositing them among discussions of exempt matters. That is not what happened here." *Galena Gazette*, 375 Ill. App. 3d at 346.

In contrast, the Board entered closed session pursuant to section 2(c)(5) to discuss whether to build a new school, funding for the school, legislative considerations, and various other topics concerning the project that were not considered in the context of the narrow topic of purchasing or leasing property for the school. The exception did not permit those

distinct discussions simply because the District eventually would have to acquire property if it were to build a new school. Accordingly, certain portions of the Board's October 12, 2021, October 26, 2021, November 16, 2021, December 14, 2021, January 13, 2022, January 25, 2022, February 8, 2022, February 22, 2022, March 8, 2022, March 22, 2022, April 12, 2022, April 26, 2022, May 10, 2022, May 24, 2022, June 14, 2022, and June 28, 2022, closed session discussions were not authorized by section 2(c)(5) of OMA, and therefore violated section 2(a) of OMA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

1) On July 6, 2022, Mrs. Lee Ann Clary submitted a Request for Review to the Public Access Bureau questioning whether the School Board of Decatur Public School District No. 61 had in recent months improperly held discussions in closed session to plan the building of a new school using COVID-19 relief funds. Mrs. Clary alleged that the public was unaware of the School Board's deliberations on that subject until a June 27, 2022, joint announcement by the School Board and Decatur Park District Board. Mrs. Clary's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA.

2) On July 18, 2022, the Public Access Bureau sent a copy of the Request for Review to the School Board President at that time, Dan Oakes, and asked the School Board to provide for this office's confidential review copies of the minutes and audio or video recordings of any meetings, open or closed, in which a majority of a quorum of the School Board discussed the potential construction of the new school. This office also asked the School Board to respond in writing to the allegation that it violated OMA by discussing the potential construction of a new school outside of open session, including by addressing whether deliberating about building the school exceeded the scope of section 2(c)(5) of OMA.

3) On August 10, 2022, counsel for the School Board provided the Public Access Bureau with those materials, including copies of closed session minutes and closed session verbatim recordings from its meetings on October 12, 2021, October 26, 2021, November 16, 2021, December 14, 2021, January 13, 2022 (except no minutes), January 25, 2022, February 8, 2022, February 22, 2022, March 8, 2022, March 22, 2022, April 12, 2022, April 26, 2022, May 10, 2022, May 24, 2022, June 14, 2022, and June 28, 2022, and the open session recording from that most recent meeting. The School Board denied that it violated OMA.

4) On August 11, 2022, this office sent a copy of the School Board's answer to Mrs. Clary. On August 16, 2022, she submitted a reply.

5) On September 4, 2022, the Public Access Bureau properly extended the time within which to issue a binding opinion by 21 business days, to October 4, 2022, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

6) Section 3.5(a) of OMA grants the Public Access Counselor the authority to review the School Board deliberations concerning the new school dating back to October 12, 2021, because Mrs. Clary submitted allegations that encompass School Board meetings since that date within 60 days after discovering the alleged violations and could not have discovered them earlier despite using reasonable diligence. The School Board conducted the discussions during a series of closed sessions and did not publicly disclose information about possibly building the new school until the June 27, 2022, joint announcement that received news media coverage, precluding the public from learning about the matter sooner.

7) Section 2(a) of OMA requires that all meetings of public bodies be open to the public unless the subject of the meeting is covered by one of the limited exceptions enumerated in section 2(c). Section 2(c)(5) permits a public body to close a portion of a meeting to discuss "[t]he purchase or lease of real property for the use of the public body, including meetings held for the purpose of discussing whether a particular parcel should be acquired."

8) On October 12, 2021, October 26, 2021, November 16, 2021, December 14, 2021, January 13, 2022, January 25, 2022, February 8, 2022, February 22, 2022, March 8, 2022, March 22, 2022, April 12, 2022, April 26, 2022, May 10, 2022, May 24, 2022, June 14, 2022, and June 28, 2022, the School Board closed a portion of each of its meetings to the public to discuss issues involving building a new school using COVID-19 relief funds.

9) The section 2(c)(5) exception did not authorize the School Board to enter closed session to discuss either building a new school using COVID-19 relief funds or pursuing an amendment to State law in order to do so, because the School Board's consideration of those objectives was not pertinent to deliberations about purchasing or leasing real property. Rather, the School Board's closed session discussions concerning potential sites for the new school stemmed from the broader underlying matter of building a new school with pandemic relief funds, which does not fall within the scope of section 2(c)(5), or any other exception. The School Board improperly subsumed the over-arching open session topic of building a new school with pandemic relief funds into the limited OMA exception for purchasing real property.

In accordance with these findings of fact and conclusions of law, the School Board is directed to remedy this violation by disclosing to Mrs. Clary and making publicly available the portions of the closed session verbatim recordings and closed session minutes that

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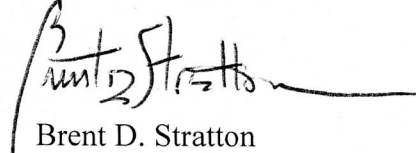
concern (1) building a new school; and (2) securing funding via legislation and the CARES Act. The disclosure must include closed session recordings and minutes of the following meetings: October 12, 2021; October 26, 2021; November 16, 2021; December 14, 2021; January 13, 2022; January 25, 2022; February 8, 2022; February 22, 2022; March 8, 2022; March 22, 2022; April 12, 2022; April 26, 2022; May 10, 2022; May 24, 2022; June 14, 2022; and June 28, 2022. Those limited portions of these recordings and minutes that directly concern the relative merits of the particular properties under consideration for acquisition may be redacted.³¹ As required by section 3.5(e) of OMA, the School Board shall either take necessary action as soon as practical to comply with the directives of this opinion or shall initiate administrative review under section 7.5 of OMA. 5 ILCS 120/7.5 (West 2020).

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2020). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mrs. Lee Ann Clary as defendants. *See* 5 ILCS 120/7.5 (West 2020).

Very truly yours,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy Attorney General

cc: Ms. Christine G. Christensen
Miller, Tracy, Braun, Funk & Miller, Ltd.
316 South Charter Street, P.O. Box 80
Monticello, Illinois 61856

³¹However, the School Board may wish to consider whether, as a result of changes in circumstances, it is necessary to still maintain confidentiality of those portions of the minutes and verbatim recordings. If not, the School Board may determine they no longer require confidential treatment and make them available for public inspection. *See* 5 ILCS 120/2.06(d), (e) (West 2021 Supp.).

CERTIFICATE OF SERVICE

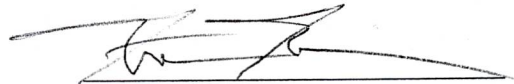
Steve Silverman, Bureau Chief, Public Access Bureau, hereby certifies that he has served a copy of the foregoing Binding Opinion (Public Access Opinion 22-012) upon:

Mrs. Lee Ann Clary
605 South Crea Street
Decatur, Illinois 62522
leeannclary@att.net

The Honorable Andrew Taylor
President, Board of Education
Decatur Public Schools
Keil Administration Building
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Ms. Christine G. Christensen
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by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Chicago, Illinois on September 30, 2022.



Steve Silverman
Bureau Chief

Steve Silverman
Bureau Chief
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100 West Randolph Street
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