



Office of Mayor Peter Schwartzman

PRESS RELEASE

Topic: Galesburg and OMA concerns

Date: 5/8/23

Prepared by: Mayor Peter Schwartzman

On 5/6/23, I received a letter from the Attorney General's office providing their opinion in a case regarding two Executive Sessions of the Galesburg City Council in December 2022.

The relevant text of the AG office's judgment are as follows:

Specifically, as it relates to the December 5, 2022 executive session, Mr. Silverman, Bureau Chief, writes: *"Based on this office's review of the closed session verbatim recording, the upcoming retirement of the Public Works Director was referenced in the context of a broader discussion about the possibility of creating a new employment position. The City Council did not substantively discuss the conduct, performance, qualifications or terms of employment of any specific employee or applicant. Instead, the discussion focused on possibly hiring a future minority applicant to fill a new employment position in response to the EEOC complaint. Because the discussion concerned the possibility of creating a new employment position rather than any specific employee or applicant for employment, section 2(c)(1) did not authorize the City Council to discuss that matter in closed session."*

As it relates to the December 22, 2022 executive session, Mr. Silverman further opines: *"Based on this office's review of the closed session, certain portions of the discussion focused on specific City employees. To the extent that the City Council discussed the salaries of existing employees and creating new positions to be filled by existing employees, those discussions directly pertained to the performance, compensation and terms of employment of specific employees and therefore were permissible under section 2(c)(1) of OMA. Other portions of the discussion, however, involved unfilled positions and the possibility of creating positions without reference to any specific employees or applicants who could potentially fill the positions. In addition, the salary study that was the primary topic of discussion concerned a comprehensive review of the compensation of employees in various categories. Because those portions of the closed session did not include discussions of specific employees or applicants for employment and instead concerned employment positions and categories of employees, section 2(c)(1) of OMA did not authorize the City Council to hold the discussions in closed session."*



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In conclusion, Mr. Silverman writes: *"In accordance with the conclusions expressed above, this office requests that the City Council remedy its improper closed session discussions by voting to make publicly available the verbatim recording of the December 5, 2022, closed session and the portions of the verbatim recording of the December 19, 2022, closed session that were not permissible under the section 2(c)(1) exception. The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed."*

Any violation of the Open Meetings Act is serious and I, when acting as Mayor or City Councilor, have wanted the City to be as transparent as possible. *The opinions offered by the Attorney General's Office are instructive and indicate that while clearly there was no intent on anyone's part to willfully violate the Open Meeting Act, violations can still occur.* It is important to note that no one in either of the meetings (which included all the City Councilors, the City Manager, our legal counsel, the City Clerk, and me) objected to the conversations as they were occurring. It is a "lesson learned" for all those involved. Lastly, critically important is whether this judgment should be construed as a violation of public trust. The answer is clearly "no" as, *once again*, there is no indication from the AG's office that there was a conscious attempt by anyone to violate the OMA or anything malicious or deceptive in the content of the discussions that took place at these Executive Meetings.

Given that no "binding opinion" is required, the City doesn't necessarily have to do anything in response to the AG's judgment. However, given that I have no interest in keeping anything discussed at these meetings private, I hereby urge the Council to vote to release all transcripts of the two meetings, including the section of the second meeting that was considered suitable for an executive session.

Moving forward, I plan to be much more discerning in the items that are placed on an executive session schedule and much more discriminating in questioning the legitimacy of any private discussions. Having been in executive meetings for twelve years, I do not believe that what happened in these two meetings was an aberration, which is why no one "called" it out. However, the AG Office's opinion is clarifying and one that I believe our Council and City can definitely learn from.

Sincerely,

Peter D. Schwartzman

Mayor Schwartzman