

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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DANA NESSEL  
ATTORNEY GENERAL

February 16, 2023

Ottawa County Board of Commissioners  
c/o Ottawa County Administration  
12220 Fillmore Street  
West Olive, MI 49460

Re: Ottawa County Board of Commissioners Meetings

Dear Ottawa County Board of Commissioners:

The Department of Attorney General received over forty citizen complaints concerning the actions of the Ottawa County Board of Commissioners at your initial January 3, 2023 meeting. Additional complaints and public comments at your meetings have identified continuing concerns about actions taken at that and subsequent Board meetings. The complaints range from potential violations of the Open Meetings Act (“OMA”), MCL 15.261, *et seq.*, and the Board’s and County’s rules and policies, to general concerns about a lack of transparency by certain commissioners; namely, that prior to the January 3<sup>rd</sup> meeting the commissioners-elect held clandestine meetings, created a secret agenda, and carried out extensive actions outside of the public’s view. The complaints allege that these behaviors continue. If true, the behavior of certain commissioners reflect a galling lack of transparency and a disregard for the trust placed in them as elected officials.

The complaints fall into the following categories:

- Decisions related to the firing and replacement of county employees (including the County Administrator, County Health Administrator, and the County Corporation Counsel) were made behind closed doors, prior to the first board meeting and prior to the commissioners taking their oaths of office.
- Decisions related to the selection of the board chairperson were made behind closed doors, prior to the first board meeting and prior to the commissioners taking their oaths of office.
- The termination of the County Health Administrator was without just cause.
- The appointment of the new County Health Administrator violates state law because he lacks the minimum qualification required by the Michigan

law.

- Decisions related to the hiring of Kallman Legal Group violate the Ottawa County Fiscal Services Policy and Purchasing Guide requiring informal solicitation, including a competitive solicitation process, for purchases between \$2,500 and \$35,000, and formal solicitation, including a competitive solicitation process, for purchases greater than \$35,000 for the purchase of goods, services and construction.
- Candidate interviews for the positions of County Administrator, County Health Administrator, and County Corporation Counsel were not conducted by the Board during an open meeting.
- Failure to include agenda items on the January 3, 2023 meeting agenda that Board members planned to introduce, including the termination and replacement of the County Administrator, County Health Administrator, and County Corporation Counsel in violation of the Ottawa County Board of Commissioners' rules.
- Failure of a commissioner to disclose a business and personal relationship with a principal of the newly appointed County Legal Counsel.

While the Department has not determined at this time that the Board's actions violated the OMA or other potentially applicable laws, the alleged conduct of certain commissioners is the antithesis of transparency and good governance and, at a minimum, is clearly contrary to the spirit and intent of the OMA. The OMA was enacted to promote governmental accountability "by facilitating public access to official decision making and to provide a means through which the public may understand issues and decisions of public concern." *Vermilya v Delta College Bd of Trustees*, 325 Mich App 416, 419 (2018). Consequently, the OMA, which should be broadly interpreted to promote openness in government, requires public bodies to meet, deliberate, and make decisions at properly noticed open meetings. Board members who surreptitiously met, deliberated, or made decisions before taking their oaths of office—which is apparent from the January 3, 2023 meeting—have violated the trust of Ottawa County citizens and their actions are clearly contrary to the spirit and intent of the OMA. Unfortunately, it appears this behavior is continuing.

In light of the numerous complaints received by the Department, and to prevent future erosion of the principles underlying the OMA by this board or any other public body subject to OMA, I will be proposing, at a minimum, the following amendments to the Act for consideration by the Michigan Legislature:

- Amendment of MCL 15.264 and MCL 15.265 – Requiring a public body to include in its public notice of a meeting an agenda for the public meeting at least 48 hours in advance of the holding of the meeting, and limiting a public body’s ability to modify that agenda during a meeting, except in exigent circumstances.
- Amendment of MCL 15.262 – Adding a definition for the term “public official” and defining it to include, but not be limited to, a person who has been elected to a public office but is not yet serving or has not yet taken his or his oath of office.

I will also be evaluating whether other laws governing local units of government should be amended to require additional transparency, ethical conduct, fidelity to a government’s own rules and policies, and accountability to their citizens.

These principles are all paramount to instilling public faith in our system of government. The behavior documented by many of your constituents demonstrates a complete lack of transparency or concern for these other attributes of good governance. With this in mind, I am hopeful that the Legislature will use this opportunity to consider potential amendments to existing laws to restore the public confidence lost following the appearance of secret deliberations and meetings by the commissioners-elect of the Ottawa County Board of Commissioners, and the apparent continuing lack of concern for open and ethical governance. Furthermore, any future actions brought to my attention that subvert the right of the public to open meetings or that in any way subvert the salutary purposes the OMA is designed to achieve will be reviewed by this Department.

Finally, it appears certain commissioners would benefit from reviewing the obligations of public officials under the OMA. An OMA Handbook is available on the Department’s website at [www.michigan.gov/ag](http://www.michigan.gov/ag), under the “Resources” tab followed by the “Open Meetings” link. You may also want to consider utilizing other resources, like the Michigan Association of Counties.

Sincerely,



Dana Nessel  
Attorney General