



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 7, 2017

Via electronic mail

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Mr. Brian LeClerc
Township Supervisor
Oswego Township
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RE: OMA Request for Review – 2015 PAC 37850

Dear [REDACTED] and Mr. LeClerc:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Board of Trustees (Board) of Oswego Township (Township) did not violate the advance notice requirements of OMA in connection with its August 11, 2015, regular meeting, but improperly restricted [REDACTED] right to address the Board during that meeting.

BACKGROUND

On October 5, 2015, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Board violated the requirements of OMA during its August 11, 2015, regular meeting by voting to limit public comment to one minute per person "with the stipulation of 'No Questions'" to shield the Road Commissioner, Gary Grosskopf, from public

scrutiny.¹ He also stated that he "believe[d] the vote to change [the] meeting rules was not on the meeting agenda that night" and alleged that "Oswego Township does not supply citizens with a printed monthly meeting agenda."²

On October 14, 2015, this office forwarded a copy of the Request for Review to the Board and asked it to provide a written response to [REDACTED] OMA allegations, together with copies of the agenda, minutes, and any existing verbatim recording of the meeting. On October 22, 2015, this office received the Township's written response, along with copies of the agenda and minutes. On October 26, 2015, this office forwarded a copy of the Board's response to [REDACTED] he did not reply. On April 14, 2016, this office sent the Board a follow up letter, asking the Board to clarify whether the change to the public comment rule was for all meetings going forward or limited to that one meeting. This office also asked the Board to explain the legal rationale for the one-minute rule, including whether it was put in place to limit comments about Road Commissioner Grosskopf. Further, this office asked the Board to provide copies of its public comment policy in effect on August 11, 2015, and any policy currently in effect. On April 27, 2016, this office received a supplemental response from the Board; it provided no rules governing public comment.

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 2016). "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).

Agenda

Section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2016)) provides: "An agenda for each regular meeting shall be posted at the principal office of the public body and at the location where the meeting is to be held at least 48 hours in advance of the holding of the meeting." Additionally, section 2.02(c) of (5 ILCS 120/2.02(c) (West 2016)) provides: "Any agenda required under this Section shall set forth the general subject matter of any resolution or ordinance that will be the subject of final action at the meeting."

¹OMA - Request for Review by Public Access Counselor form submitted by [REDACTED] (October 5, 2015).

²OMA Request for Review by Public Access Counselor form submitted by [REDACTED] (October 5, 2015).

██████████ contended that the Board did not provide citizens with a printed copy of the agenda for its August 11, 2015, meeting. Although OMA requires a public body to post a copy of its meeting agenda at its principal office and at the location of the meeting at least 48 hours in advance of the meeting, it does not require a public body to distribute copies of its agenda to citizens who attend an open meeting. Further, ██████████ did not allege that the Board failed to post notice of its August 11, 2015, meeting at the Board's principal office and the meeting location. Accordingly, this office concludes that the Board did not violate section 2.02(a) of OMA.

Additionally, this office's review of the agenda for the Board's August 11, 2015, meeting showed that it listed: "MOTION: To limit public comments to one minute each."³ ██████████ did not provide any facts contradicting that this motion was listed on the agenda. Therefore, based on the available information, the Board did not violate section 2.02(c) of OMA when it voted to restrict public comment during the meeting because the general subject matter of that final action was listed on the agenda.

Public Comment

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." Under the plain language of section 2.06(g), a public body may restrict public comment only pursuant to rules it has established and recorded, which must tend to accommodate, rather than unreasonably limit, the right to address public officials. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 4, 7 (requiring members of the public to announce their home addresses before addressing board members violated section 2.06(g) because it was not an established and recorded rule and it unreasonably restricted the right to public comment); Ill. Att'y Gen. PAC Req. Rev. Ltr. 48439, issued August 3, 2017, at 4 (public body's limitation of an individual's comments to two minutes from its normal five minutes violated section 2.06(g) because it was not pursuant to an established and recorded rule).

The Attorney General has opined in a binding opinion (Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5-6) that:

public bodies may generally promulgate reasonable "time, place and manner" regulations that are necessary to further a significant governmental interest. * * * [T]he primary purpose of adopting

³Oswego Township Board of Trustees, Agenda Item (unnumbered), MOTION: To limit public comments to one minute each (August 11, 2015).

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rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings.

Notwithstanding the legitimate interest in maintaining decorum, in order to withstand constitutional muster, any restrictions on public comment that are content-based "must serve a compelling state interest and be narrowly drawn to achieve that purpose." *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009).

In the Board's April, 22, 2016, response to this office, the Township Supervisor, James K. Detzler, asserted:

██████████ had complained to the media about our Road Commissioner[']s time in Florida and in anticipation for a large crowd that night I limited the response to one minute for that meeting only.

Depending on the crowd that evening we believed we did not want to be there until all hours of the evening.⁴

Supervisor Detzler further asserted that the members of the public were normally permitted to speak as long as they wished.

This office has also reviewed a copy of the minutes of the August 11, 2015, meeting. The minutes confirm that the Board voted to limit comments to one minute per person before it requested attendees who wished to speak to come forward.⁵

The Board did not provide this office with a copy of any established and recorded rules governing public comment. Further, the Board did not otherwise demonstrate that at its August 11, 2015, meeting, it acted in accordance with an established and recorded rule permitting it to approve a temporary time limit on public comments. Unlike an established and recorded rule on public comments that applies consistently to all meetings, the rule approved in this case limited the amount of time each member of the public could speak during a single meeting where a contentious issue was expected to be discussed. Indeed, the Board's response to this office acknowledged that it imposed this restriction in anticipation of a large turnout at the

⁴Letter from James K. Detzler, Oswego Township Supervisor, Oswego Township, to Ivan O. Taylor Jr., Public Access Bureau (April 22, 2016).

⁵Oswego Township Board, Meeting, August 11, 2015, Minutes 2.


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meeting and the possibility that many members of the public would want to address the Board concerning the Road Commissioner. Although a public body may adopt reasonable rules aimed at promoting efficiency and preserving decorum, the Board's one-minute limit was an ad hoc rule—not an established and recorded rule—designed to restrict the public's right to address public officials at the August 11, 2015, meeting. Therefore, this office concludes that the Board violated section 2.06(g) of OMA by improperly limiting public comment during that meeting.

There are no means for the Board to remedy its violation of section 2.06(g) at this time. If the Board has not already established and recorded rules governing public comment, which apply to all open meetings, the plain language of section 2.06(g) of OMA requires it to do so. This office suggests that if the Board wishes to impose time limitations on public comment, it should establish and record rules containing reasonable restrictions, such as two or three minutes per person per meeting, or a limit on the total amount of time spent on public comment, pursuant to section 2.06(g) of OMA. Many public bodies establish rules that specify the head of the public body may extend normal time limits for public comment if warranted by public interest in an issue.

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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