



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

June 5, 2012

PUBLIC ACCESS OPINION 12-010
(Request for Review 2012 PAC 18763)

OPEN MEETINGS ACT:
Right to Record an Open Meeting

Mr. Michael W. Shields
26608 W. Hickory Lane
Ingleside, Illinois 60041

Mr. Martin P. Paulson
Chief County Assessment Officer
Clerk of the Lake County Board of Review
18 N. County Street, 7th Floor
Waukegan, Illinois 60085-4335

Dear Mr. Shields and Mr. Paulson:

This binding opinion is issued pursuant to section 3.5(c) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(c) (West 2010)). For the reasons set out below, we conclude that on January 4, 2012, the Lake County Board of Review (Board) violated section 2.05 of OMA (5 ILCS 120/2.05 (West 2010)) by refusing to permit Mr. Michael W. Shields to audio record an open meeting of the Board because he failed to provide advance notice of his intention to do so. Further, we conclude that the provision of the Board's rules that requires a person who wishes to record an open meeting of the Board to provide advance notice to the Board Clerk is invalid.

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BACKGROUND

Mr. Shields' Request for Review provides the following facts in support of his allegations.¹ Mr. Shields was scheduled to appear at a property tax hearing before the Board on January 4, 2012. Based on a previous occasion when the Board had refused to allow him to audio record a public meeting,² Mr. Shields contacted the Board seeking permission to record the meeting well before his scheduled hearing date. An employee of the Board reportedly advised Mr. Shields that the Sheriff, rather than the Board, was responsible for regulating the recording of its meetings. Accordingly, on December 22, 2011, Mr. Shields contacted the Sheriff's Office's FOIA officer and was referred to Lieutenant Lucas. Lieutenant Lucas stated that he had not previously received a request to record a meeting from a member of the public, and indicated that he would consult with the Board. The following day, Lieutenant Lucas informed Mr. Shields that he would be allowed to record the meeting, and that court security had been notified so that upon his arrival he would be escorted to the location of the meeting.

On January 4, 2012, Mr. Shields arrived at the meeting with his audio recording device but was informed by Mr. Pete Fleming, a member of the Board, that he could not record the meeting because he had not obtained prior permission from the Board Clerk, Martin Paulson. Mr. Shields asked to speak with Mr. Paulson but was told that Mr. Paulson's whereabouts were unknown. As a result, Mr. Shields did not record the proceedings.

On March 5, 2012, this office received Mr. Shields' Request for Review alleging that he was prohibited from recording an open meeting of the Board in violation of OMA. This office forwarded a copy of Mr. Shields' Request for Review to Mr. Paulson on March 14, 2012, and asked for a written response to the allegations therein.³

By letter dated March 27, 2012, Mr. Paulson responded to our request, noting that in 2011, the Board adopted and subsequently implemented rules that allow appellants before the Board or their representatives to record a hearing, but require that any person who wishes to record the proceedings must contact the Board Clerk in advance.⁴ Mr. Paulson explained that

¹Correspondence from Michael W. Shields to Public Access Bureau (March 5, 2012).

²At the September 16, 2011, hearing, Mr. Shields was reportedly informed by Lake County deputies that he needed a court order to record the meeting.

³Correspondence from Lindsay LaVine, Assistant Attorney General, Public Access Bureau, to Martin Paulson, Chief County Assessment Officer, Clerk of the Lake County Board of Review (March 14, 2012).

⁴Correspondence from Martin P. Paulson, Chief County Assessment Officer, Clerk of the Lake County Board of Review to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (March 27, 2012).

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"the reason for the desire to have the Clerk directly involved is so that [he] can ensure that the individual can get their equipment though [sic] the security checkpoint and that [he] can make the Board members aware of the circumstance in advance, so as not to disrupt our process." He stated that if Mr. Shields "had actually spoken with me on his desire to audio tape his hearing I certainly would have made sure that he was able to do so." Instead, at the time of the January 4, 2012, meeting, Mr. Fleming "took a literal view of the Board rules regarding the request to audio tape the meeting" and because Mr. Shields had not contacted the Board Clerk in advance, Mr. Fleming denied the request. Mr. Paulson also noted that going forward, he would ask Board members to review the rules and understand that they "should be flexible in dealing with these requests, even if the party involved has not made direct contact with the Clerk of the Board."

On March 30, 2012, this office forwarded a copy of the Board's response to Mr. Shields.⁵ In a letter dated April 11, 2012, Mr. Shields asserted, among other things,⁶ that: (1) Mr. Paulson is not identified as the Clerk on the Board's website; and (2) Mr. Paulson was not present at the hearing.⁷

On May 24, 2012, we reviewed the 2011 Rules of the Lake County Board of Review (Lake County Rules), as posted on the Board's website.⁸ The Lake County Rules clearly identify Mr. Paulson as the Clerk of the Board and provide the Board's telephone number. Section I.G(1) of the Lake County Rules provides:

G. Open Meetings Act. Hearings held by the Board are open to the public, subject to the exceptions cited by the Open Meetings Act (5 ILCS 120/1.02).

1. Audio or video recording is permitted by any person.
However, recording cannot disrupt a hearing nor are persons required to identify themselves to facilitate a

⁵Correspondence from Lindsay LaVine, Assistant Attorney General, Public Access Bureau, to Michael W. Shields (March 30, 2012).

⁶Mr. Shields' April 11, 2012, letter also refers to requirements of the Illinois Property Tax Code (35 ILCS 200/3-30 (West 2010)). Pursuant to section 7(c)(3) of the Attorney General Act (15 ILCS 205/7(c)(3) (West 2010)), the Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2010)). Accordingly, the Public Access Bureau cannot review allegations relating to the Property Tax Code or the Illinois Department of Revenue's rules.

⁷Correspondence from Mr. Michael W. Shields to Lindsay LaVine, Assistant Attorney General, Public Access Bureau (April 11, 2012).

⁸ Lake County Board of Review Rules, available at <http://www.lakecountyil.gov/Assessor/BoardofReview/Documents/BoardRulesOct27.pdf> (last visited June 5, 2012).

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recording. *The Clerk of the Board must be informed in advance that an audio or video recording of a hearing will be made.* (Emphasis added.)

ANALYSIS

Section 2.05 of OMA provides:

[A]ny person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

Thus, under this section, members of the public are entitled to record public meetings, subject only to the public body's authority to implement reasonable rules governing the right to record. OMA does not define "reasonable," nor have we found any reported Illinois court decisions reviewing a public body's rules under this section of OMA to determine whether they are reasonable. Undefined statutory terms must be given their plain and ordinary meaning. *Exelon Corp. v. Dept. of Revenue*, 234 Ill. 2d 266, 275 (2009) (finding that where a statute fails to specifically define a word, a court may use a dictionary to determine the word's plain and ordinary meaning). "Reasonable" ordinarily means that which is fair, proper, or moderate under the circumstances. Black's Law Dictionary 1379 (9th ed. 2009). Accordingly, a reasonable rule governing the right to record must be fair and appropriate to OMA's express intention to allow the recording of meetings.

The Office of the Attorney General has previously considered the meaning of the phrase "reasonable rules" under section 2.05, and advised that "reasonable rules" for recording meetings may include "rules or guidelines which protect the integrity of a public meeting and those participating in it or the safety of those attending a public meeting." Ill. Att'y Gen. Inf. Op. No. I-00-015, issued April 5, 2000, at 3 (a copy of which is attached hereto for reference). The opinion further states that "[r]ules which hinder or thwart the ability of a person to exercise the right to record a public meeting, without an obvious concomitant benefit to the public body, would not appear to be 'reasonable'." Thus, a public body may limit the right of the public to record open meetings only pursuant to prescribed rules, and then only to the extent that those rules are designed to prevent disruptions or avoid safety hazards and do not unduly interfere with the right to record.

The requirement that a person who would like to record an open meeting must notify the Clerk in advance of the meeting clearly places a burden on people who want to exercise this right under OMA and results in restricting the ability to record open meetings. The

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Board has failed to demonstrate how this requirement is necessary to prevent interference with the proceedings or protect the safety of those in attendance. The Clerk has stated that the reason for doing so is "so that [he] can ensure that the individual can get their equipment though [sic] the security checkpoint and that [he] can make the Board members aware of the circumstance in advance, so as not to disrupt our process." In this case, however, Mr. Shields was escorted to the location of the public meeting by Sheriff's personnel pursuant to the guidance that he received from the Board. Moreover, although it may be necessary for the Board to have a procedure in place to allow people with recording devices to pass through the security checkpoint, the Board's current advance notice requirement does not appear to be the least restrictive approach to this issue. Further, Mr. Shields announced to those present that he would be recording the proceedings. In what way the lack of advance notice of Mr. Shields' intention to record the hearing would have disrupted the proceeding has not been addressed by the Clerk, and none is apparent.

Under OMA, it is the burden of the public body to show that rules restraining the rights of the public are reasonable. The Board has not provided any evidence that enforcement of this rule is necessary to protect the integrity of the Board's proceedings. To the contrary, in this case the application of the rule precluded Mr. Shields from exercising a right that is protected by the provisions of OMA, despite his good faith attempts to comply with all requirements imposed by the Board and without any basis to believe that his doing so would disrupt the proceedings or raise safety concerns for the meeting attendees. In explaining the policy, the Board did not reference any circumstances in which allowing a member of the public to record the Board's proceedings has been disruptive or has interfered with the Board's conduct of its business. Absent some evidence to justify this regulation, the rule is clearly not "reasonable" in that it can result in thwarting, and, in Mr. Shields' case has thwarted, the right of a member of the public to record an open meeting of the Board.

Moreover, as a practical matter, any rule requiring advance notice of recording a meeting would be difficult or impossible to enforce, given that many members of the public routinely carry cellular phones or other electronic devices capable of recording. More importantly, because OMA specifically provides that meetings may be recorded, any public body that prescribes a rule requiring advance notice of recording a meeting would have a steep burden to overcome in order to demonstrate that such a rule is reasonable.

Therefore, we conclude that enforcement of that part of section I.G(1) of the Lake County Rules requiring advance notice to the Clerk in Mr. Shields' case violated section 2.05 of OMA. Further, because the rule has not been shown to be necessary to protect the integrity of a public meeting or the safety of those attending it, the rule is unreasonable on its face and its future application likewise would be violative of section 2.05 of OMA.

FINDINGS AND CONCLUSIONS

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

1) On January 4, 2012, the Lake County Board of Review refused to allow Mr. Michael Shields to audio record an open meeting of the Board because he did not notify the Clerk in advance of his intention to do so in accordance with section I.G(1) of the 2011 Rules of the Lake County Board of Review.

2) Based on a prior experience in which the Board refused to allow Mr. Shields to record a meeting, Mr. Shields had sought permission from the Board to record the meeting well in advance of the scheduled date. An employee of the Board had directed Mr. Shields to the Sheriff, where he was referred to Lieutenant Lucas. Lieutenant Lucas had informed Mr. Shields that he could record the meeting and had notified court security to escort him to the meeting location on January 4, 2012. On the day of the hearing, Mr. Shields was denied permission to record the meeting.

3) On March 5, 2012, the Public Access Bureau received Mr. Shields' Request for Review alleging that the Board violated the Open Meetings Act by preventing him from recording its January 4, 2012, meeting. Mr. Shields' Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2010)).

4) The Attorney General properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA (5 ILCS 120/3.5(e) (West 2010)). Therefore, the Attorney General may properly issue a binding opinion with respect to Mr. Shields' Request for Review.

5) Section 2.05 of OMA provides that "any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings."

6) Although the Board is authorized under section 2.05 of OMA to prescribe reasonable rules to govern the right to record its open meetings, the Board has failed to provide any evidence or justification that the advance notification requirement of section I.G(1) of the 2011 Rules of the Lake County Board of Review is reasonably necessary to protect the integrity of its meetings or the safety of those in attendance. Accordingly, we find that the rule is clearly not "reasonable" because it can be and has been applied to preclude the statutory right of a

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member of the public to record an open meeting of the Board without a clear justification for this restriction.

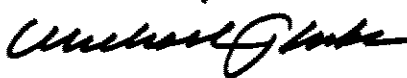
7) The Attorney General concludes that, as a matter of law, the Board violated section 2.05 of OMA when it refused to allow Mr. Shields to record its January 4, 2012, open meeting because he did not notify the Clerk in advance of his intention to do so. Further, because the notification requirement has not been shown to be reasonably necessary to protect the integrity of a public meeting or the safety of those attending it, that provision of section I.G(1) of the 2011 Rules of the Lake County Board of Review Rule is not a "reasonable rule[]" governing the right to record an open meeting as contemplated by section 2.05 of OMA, and therefore its future application would also be violative of section 2.05.

In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by conducting its future meetings in full compliance with OMA. The Board is also directed to ensure that all Board members complete the Public Access Counselor's electronic OMA training in accordance with section 1.05 of OMA (5 ILCS 120/1.05 (West 2010), as amended by Public Act 97-504, effective January 1, 2012); assure that security personnel are cognizant of the provisions of section 2.05 of OMA providing that persons attending open meetings of the Board have a right to record its proceedings, including the right to enter the premises with recording equipment; and revise its rules consistently with this opinion.

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 2010). 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 Mr. Michael W. Shields as defendants. *See* 5 ILCS 120/7.5 (West 2010).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Jim Ryan
ATTORNEY GENERAL

April 5, 2000

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MEETINGS:
Rules Regarding Use of Recording
Devices at Public Meetings

The Honorable Stewart J. Umholtz
State's Attorney, Tazewell County
342 Court Street, Suite 6
Pekin, Illinois 61554-3298

Dear Mr. Umholtz:

I have your letter wherein you inquire whether, pursuant to the provisions of the Open Meetings Act (5 ILCS 120/1 et seq. (West 1998)), a non-home-rule municipality may properly adopt and enforce a resolution setting forth the guidelines described herein governing the use of "recording devices" at a public meeting. Because of the nature of your inquiry, I do not believe that the issuance of an official opinion is necessary. I will, however, comment informally upon the question you have raised.

You have stated that the village of North Pekin recently adopted a resolution which provides, in pertinent part:

" * * *

1. 'Recording Device' shall be defined as any and all cameras, recorders, tape recorders, video cameras, electronic equipment, and related equipment used for the purpose of preparing video and/or sound recordings.

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2. All recording devices must be on a solid surface or appropriate mounting or tripod so that the device is in a fixed location.

3. Any recording device must be set up prior to the start of the Village meeting and the focus of said recording device must be in a fixed location with a fixed focus. The camera, or other recording device, may not be swiveled or focused on different objects during the meeting, but must remain in a fixed location with a fixed position and focus.

4. No cameras or other types of recording devices may block any aisle, entrance or exit to the Village Hall.

5. Any recording devices must be turned on prior to the start of the Village Meeting and may not be turned off and on during the meeting, but rather, once said unit is turned on, then it must remain on until it is turned off at the end of the meeting and removed from said meeting.

6. Failure to follow any or all of the above rules and guidelines shall result in immediate removal of said recording equipment or device immediately from the Village meeting.

* * *

"

With reference to the foregoing resolution, you have inquired whether the restrictions prescribed therein are unreasonably restrictive.

It is well established that non-home-rule municipalities possess only those powers which are expressly granted to them by statute, together with those powers necessarily implied therefrom to effectuate the powers which have been granted, and those powers which are considered indispensable to the accomplishment of the purposes of the municipal corporation. (Scadron

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v. City of Des Plaines (1992), 153 Ill. 2d 164, 174.) In this regard, section 2.05 of the Open Meetings Act (5 ILCS 120/2.05 (West 1998)) provides, in pertinent part:

"Subject to the provisions of 'An Act in relation to the rights of witnesses at proceedings conducted by a court, commission, administrative agency or other tribunal in this State which are televised or broadcast or at which motion pictures are taken', approved July 14, 1953, as amended, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

* * *

(Emphasis added.)

Under section 2.05 of the Open Meetings Act, it is clear that members of the public are entitled to record the proceedings at public meetings of public bodies as a matter of right, subject, however, to the authority of the public body to regulate that right by the prescription of reasonable rules related thereto. The issue, therefore, is whether the restrictions adopted by the village of North Pekin are "reasonable".

It is well established that a statutory term which is not defined by statute, such as "reasonable rules", must be given its ordinary and popularly-understood meaning. (Gem Electronics v. Department of Revenue (1998), 183 Ill. 2d 470, 477-78.) The term "reasonable" ordinarily refers to that which is fair, proper or suitable under the circumstances. (Black's Law Dictionary 1265 (6th ed. 1990).) The use of the phrase "reasonable rules" in section 2.05 of the Open Meetings Act was obviously intended to encompass rules or procedural guidelines which protect the integrity of a public meeting and those participating in it, or the safety of those attending a public meeting. In short, the term "reasonable rules" contemplates guidelines that prevent interference with the overall decorum and proceedings of a meeting. In light of this purpose, several of the rules adopted by the village of North Pekin appear to be unreasonably restrictive.

The phrase "recording device", as used in the ordinance, refers to equipment that is commonly used for audio or video recording. The second section of the resolution requires that all recording devices be placed in a fixed location, "* * * on a solid surface or appropriate mounting or tripod * * *". The intent of this provision is presumably to minimize the number of distractions which may occur during a public meeting by taking steps to prevent recording devices from falling over or being dropped, for example. Because the definition of "recording device" is relatively broad, however, it is foreseeable that persons taking photographs with small hand held cameras may be unable to comply with the resolution's provisions or may have to incur the expense of investing in additional equipment to satisfy the resolution's provisions. Thus, at least in some instances, it appears that section 2 of the resolution may place an unreasonable burden upon persons who desire to record a public meeting.

Section 3 of the resolution requires that all recording devices be set up prior to the start of a village meeting, and that recording devices be focused prior to the meeting and locked into position for the duration of the meeting. Initially, I note that the provisions of section 3 appear to be intended to address issues primarily related to videotaping or photographing a public meeting. Because the definition of "recording device" also includes an audio or sound recording component, however, the section poses significant questions regarding compliance by someone who is engaged only in audio recording.

Moreover, with regard to video recording, additional potential problems are apparent. Arguably, the intent of section 3 is to prevent the disruption of a meeting that could result from the setting up of and operation of a video camera, such as carrying in and erecting the necessary equipment, laying any cables and hooking the equipment up to electrical sources, as well as moving the camera around the room to record the comments of particular speakers, whether public officers or members of the public. For a meeting which includes a scheduled recess or other formal break on the agenda, it would be equally reasonable for people to be permitted to set up or remove their equipment during the recess period. Moreover, although it is possible that a person videotaping a meeting could block the view of others when operating the camera and swiveling it around during a meeting, totally prohibiting the movement of a camera during a meeting does not appear to be the least restrictive method of addressing

this problem. To the contrary, it appears that this problem could be resolved simply by designating a part of the room for the use of those engaged in videotaping.

The fourth section of the resolution prohibits cameras or other types of recording devices from blocking the aisles, entrances and exits to the village hall. Such a provision obviously protects public safety and is not patently unreasonable.

Section 5 of the resolution requires that all recording devices be turned on prior to the call to order of a meeting and prohibits turning the devices off until the meeting has adjourned. A policy requiring that recording devices, especially those which contain an audio recording component, remain running until after the adjournment of a meeting including during recess periods or official breaks, places the operator of the device in the position of potentially violating the prohibition against eavesdropping by recording conversations that may not occur during a public meeting (see 1975 Ill. Att'y Gen. Op. 107). Moreover, particularly where a meeting lasts for several hours, it would appear to be unreasonable to prohibit persons from turning their equipment off to reload film or batteries, removing it during recess periods or other formal breaks or simply turning the device on and off to record selected parts of the meeting.

Rules which hinder or thwart the ability of a person to exercise the right to record a public meeting, without an obvious concomitant benefit to the public body, would not appear to be "reasonable". It is difficult to perceive of how a policy which prohibits a person who desires to record a meeting from swiveling or re-focusing a camera or turning a recording device on or off would materially protect the integrity of the meeting or maintain decorum. To the extent noted above, it appears that the guidelines in question do not constitute "reasonable rules" concerning the recording of the proceedings at public meetings, and therefore impermissibly limit the statutory right of persons to record proceedings of public bodies.

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This is not an official opinion of the Attorney General. If we may be of further assistance, please advise.

Sincerely,

A handwritten signature in dark ink, appearing to read "Michael J. Luke". The signature is fluid and cursive, with the first name "Michael" being more prominent than the last name "Luke".

MICHAEL J. LUKE
Senior Assistant Attorney General
Chief, Opinions Bureau

MJL:LP:cj