

Original Complaint to the AG:

Sent: Wednesday, November 13, 2013 9:16 AM
To: 'Access, Public'; 'Access, Public'
Subject: OMA Request For Review - Vermilion County Board

I hereby submit this request for the Public Access Counselor to review this alleged Open Meetings Act (OMA) violation.

Date of alleged violation of OMA by public body: **November 12, 2013**

Name of Public Body: **Vermilion County Board**

Summary of facts:

A Vermilion County Board meeting was conducted at approximately 6:00 P.M. on November 12, 2013.

During the public comment session on the agenda, the chairman asked if anyone from the audience had comments not pertaining to the wind farm issue.

I replied that I had comments not pertaining to the wind farm issue and starting moving towards the podium.

The chairman then made an immediate arbitrary decision, putting unestablished and unrecorded rules in place for public comments, stating that he would allow those residents of Vermilion County to speak first and if there was any time left I would be allowed to address to board. Common established practice for this public body is that people line up along the wall in the order they wish to speak, they then move to the podium one at a time, in the order they are lined along the wall. I was the first person in line.

He was well aware of the subject of my comments and changed the rules in an attempt at intimidating me into not speaking.

I view this as an attempt at controlling the subject matter of public comments.

The Open Meetings Act specifically states, in [5 ILCS 120/2.06(g)] Minutes; Right to speak; that any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.

The chairman made an arbitrary decision to not follow the rules established and recorded by the Vermilion County Board.

I am fully aware of the fact that public bodies may establish reasonable rules for public comment. Such rules include length of time to speak, etc. Even if the rule of county residents speaking first were established and recorded, that rule should be considered unreasonable and unduly restrictive on those that attend a meeting, especially considering that the OMA does not distinguish between resident and nonresidents of a public body's geographical coverage area.

Thanks,
John Kraft
7060 IL HWY 1
Paris, IL. 61944

Vermilion County Response to Complaint:

RANDALL J. BRINEGAR
VERMILION COUNTY STATE'S ATTORNEY
WILLIAM T. DONAHUE
ASSISTANT STATE'S ATTORNEY/CIVIL
DIVISION
6 N VERMILION STREET
DANVILLE, ILLINOIS 61832
217-554-6000

December 12, 2013

26891 JJ
RECEIVED
ATTORNEY GENERAL

DEC 16 2013

Mr. Josh Jones
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL 62706

FOIA/OMA

Re: OMA Request for Review – 2013 PAC 26891

Dear Mr. Jones:

In response to your letter regarding the conduct of our public comment or audience participation session, I am enclosing the requested items as well as our Rule of Order. Let me also say that Mr. Kraft was not denied the opportunity to speak at the meeting. The Chairman, as presiding officer did recognize individuals in and ensured that the meeting and public comment was held in an orderly fashion. To put this in context, several individuals have been regularly appearing and protesting the operation of wind mills in Vermilion County. We have a time limit of 30 minutes set aside for public comments. The opponents of the wind farm at a couple of meetings have taken to lining up and occupying the time allotted for public comments. They essentially form a line before the start of comments. This can have the effect of eliminating the opportunity of others to speak on other issues. The Chairman, using his authority and the Rules of Order, asked if there were others who wished to speak on other topics. He asked for residents first because that is who we impact greatest, the people who live here and pay taxes. Then he allowed the wind farm opponents to speak, including Mr. Kraft. In point of fact, another resident did want to speak and appreciated being recognized. The Chairman's actions provided some control and procedure but did not obstruct anyone's right to speak. The purpose of the chair is to be certain the meeting is orderly and under Robert's Rules of Order, adopted by our Rules of Order, the chair generally must recognize a person before they speak.

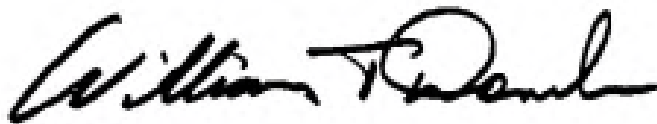
The Open Meetings Act provides that any person may address the Board but that the Board may adopt rules concerning public comments. See Section 2.6(g). Our Rules of Order do provide rules concerning audience participation. Our rules also appoint the chairman as the presiding officer of the meeting. Finally, we have adopted Robert's Rules of Order. As such, the Chairman, in order to ensure an orderly, fair process is in place, has the authority to recognize speakers and ensure that all people have the opportunity, within the time limitations provided for, are given an opportunity to speak. As long as there is time available, no one will be denied the opportunity to speak. To my knowledge, no one has been denied that opportunity. The order in which they are recognized is up to the Chairman as part of his or her duty in preserving order and conducting

December 12, 2013

business. The Open Meetings Act does not require a free for all. That process could intimidate others from even attempting to speak. For more than a year, the same core group has had the opportunity to speak at every meeting. No one has been denied the opportunity to speak because of their viewpoint.

We do anticipate that as controversy continues, and the same core group continues to occupy the public comment section of the agenda, other residents may have difficulty obtaining the floor. We are therefore considering amending our rules and that amendment is enclosed. Essentially, for monthly board meetings, comment on agenda items only will be entertained. We will entertain comments from residents and local taxpayers first because we directly affect their lives. All others will be allowed within the time constraints permitted. Except for meetings at which the wind farm opponent line up and occupy the entire public comment session, there has not been a meeting at which we exhausted the time frame for comments. In our experience, 20 to 30 minutes has been ample time to make a point or posit a question. Other comments or concerns may be made at the various committee meetings. I would note that these committee meetings are attended by the wind farm opponents as well and used to express their views. Additionally, with 27 board members, there is ample opportunity to talk to representatives about their concerns. Others have also chosen to appear and comment at the committee level as well. We would appreciate any views you have on this. We did consult with another member of your staff in general on this subject. And I believe the changes are consistent with previous rulings made by your office.

Sincerely,



William T. Donahue
Assistant State's Attorney/Civil Division
Vermilion County Board

Enclosure

My comments on Vermilion County response #1:

Sent: Thursday, January 02, 2014 8:05 AM
To: 'PublicAccess@atg.state.il.us'; 'Access, Public'
Subject: Response to 2013 PAC 26891

Please forward this to Mr. Joshua M. Jones.

January 2, 2013

Mr. Josh Jones
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL. 62706

Re: OMA Request for Review – 2013 PAC 26891

Mr. Jones,

This is my response to the letter dated December 12, 2013 and signed by Vermilion County Board's Mr. Donahue.

I will address each paragraph as needed:

1. I never claimed I was denied the right to speak; my claim was that the Chairman made an immediate arbitrary decision, putting un-established and unrecorded rules in place for public comments. This is a violation of Section 2.06 (g) which states:

(g) Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.

The established and published rules for public comment are found in the Vermilion County Board Rules of Order file located here:

<http://www.co.vermilion.il.us/ctybrd/RulesOfOrder.pdf>

Rule 8. Audience Participation. States that:

Audience comments will be heard at regular and special meetings of the County Board at the time appointed on the agenda. Comments will be limited to five (5)

minutes a person, and no more than thirty (30) minutes will be permitted for all audience comments. Persons speaking from the audience shall state their name, address, and the name of any person they may be representing.

Nothing recorded in Rule 8 even remotely establishes that Vermilion County residents speak before all others. There is a difference between recognizing someone before they speak, and telling them they will speak after all others because of where they happen to live. All of the other nonsense about wind farm opponents speaking is irrelevant to this situation and is an attempt at creating a “group” of people that are nonexistent.

2. As I stated in my request for review, rules that allow the Chairman to pick and choose who speaks and when, based on where they live, are considered unreasonable and unduly restrictive. Nothing in the Open Meetings Act distinguishes between residents and nonresidents of a certain geographical area. Furthermore, any time, place, and manner restrictions do not include place of residency as a qualifying factor.

I am aware that public bodies can adopt rules, and any rules so adopted must be published in order to inform the public how the public body is to be addressed. The published rules did not include residency as a factor, and the immediate arbitrary decision by the chairman to make it a factor was a violation of Section 2.06 (g).

I have attended Vermilion County Board meetings prior to and after this one, no such restrictions were in place that I was made aware of.

3. Nothing in paragraph 3 is relevant to this request for review, except for maybe the potential adoption of new rules that state they will accept comments from residents and local taxpayer first. This would be a violation of the Open Meetings Act. I believe the legislative intent of the act is to allow any person to attend and record public meetings, and to also address the public body during open meetings. Section 2.06(g) even states “any person” without additional qualifications applied. If the legislature would have wanted to additionally restrict comments based upon where a person lives, it most certainly would have put that language in the Act.

Thanks,
John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

Vermilion County additional response:

**RANDALL J. BRINEGAR
VERMILION COUNTY STATE'S ATTORNEY
WILLIAM T. DONAHUE
ASSISTANT STATE'S ATTORNEY/CIVIL
DIVISION
6 N VERMILION STREET
DANVILLE, ILLINOIS 61832
217-554-6000**

January 8, 2014

Mr. Josh Jones
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL 62706

JJ 20891
RECEIVED
ATTORNEY GENERAL

JAN 10 2014

FOIA/OM#

Re: OMA Request for Review - 2013 PAC 26891

Dear Mr. Jones,

With reference to Mr. Kraft's response, I wanted to add the following.

The inherent authority and duty of a chairman is to maintain order. That is why we have adopted Robert's Rules of Order and elect a chairman to preside over the meeting. The process of ensuring everyone has a right to speak is part of that process. If the chairman cannot recognize the order in which people speak, then instead of a meeting conducted under Robert's Rules of Order, we have a free for all where a certain group can literally filibuster by organizing and lining up so they determine who speaks. That has happened. A certain group has lined themselves up and conferred about who is to speak and even pointed at one another to determine order of speaking. Calling people up in a certain order is the function of the chair. It is a practice to ensure order, not a rule limiting comments from anyone. By adopting Robert's Rules of Order (see Rule 4) in addition to our County Board Rules, people are put on notice that the chair will preside and preserve order. Indeed, it is critical that no one was excluded or prevented from speaking. In point of fact, a local resident did want to speak and was recognized for that purpose. Without that authority the chair no longer is running the meeting, but has abandoned it to whoever steps forward quickest. There is a difference between recognizing the order in which people speak to ensure others are not left out and a rule which would exclude people from speaking. If the chair limited who could speak or for how long, that would be a substantive rule which would have to be published and adopted. The actions of the chairman were consistent with our published rules, including Robert's Rules of Order. As indicated, the day may come when a person is prevented from speaking due to time constraints. Anticipating that day, which to date has not occurred, we are preparing some substantive rule changes. However, that is not yet an issue.

If you need additional information please let us know. We can either fax or email this information to you.

Sincerely,



William T. Donahue
Assistant State's Attorney/Civil Division
Vermilion County Board

6 N VERMILION • DANVILLE, ILLINOIS • 61832
PHONE: CIVIL DIVISION: 217-554-6007 • MAIN OFFICE: 217-554-7750
CIVIL DIVISION FAX 217-554-6010
MAIN OFFICE FAX 217-554-7775

[My response to Vermilion County response #2:](#)

Sent: Thursday, January 23, 2014 11:44 AM
To: 'JJonesxxxxxxx'
Cc: 'Terrie Sherer'; 'PublicAccess@atg.state.il.us'
Subject: Response to 2013 PAC 26891

January 23, 2014

Mr. Josh Jones
Assistant Attorney General
Public Access Bureau
500 South Second Street
Springfield, IL. 62706

Re: OMA Request for Review - 2013 PAC 26891

This is in response to the letter dated January 10, 2014, from Mr. Donahue, the Vermilion County Assistant State's Attorney in reference to 2013 PAC 26891

I am not questioning the Chairman's authority to recognize people to speak. I am questioning his authority to impose an immediate arbitrary decision, putting un-established and unrecorded rules in place for public comments.

Prior to the meeting in question, and in all subsequent meetings, there was not, and has never been since the complaint, a rule or decision to relegate nonresidents to the end of the line for public comment.

There is a difference between recognizing someone to speak, and publically stating that a certain class of people will speak last, which is what happened in this case.

Additionally, the January 2014 meeting public session did not allow all members of the public that wished to speak, an opportunity to speak. There were more than the allotted time.

Thanks for your consideration,

John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944