



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 28, 2014

Mr. John Kraft
7060 Illinois Highway 1
Paris, Illinois 61944

The Honorable Gary Weinard, Chairman
Vermilion County Board
6 North Vermilion Street
Courthouse Annex - 3rd Floor
Danville, Illinois 61832

RE: OMA Request for Review – 2013 PAC 26891

Dear Mr. Kraft and Chairman Weinard:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons that follow, the Public Access Bureau concludes that the Vermilion County Board (Board) violated OMA by imposing an arbitrary and extemporaneous rule regarding public comment during the Board's November 12, 2013, meeting.

On November 13, 2013, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that when he attempted to address the Board during the public comment portion of the Board's November 12, 2013, meeting, the Chairman of the Board stated that he would allow Vermilion County residents to speak first, and would allow Mr. Kraft, who is not a resident of Vermilion County, to comment if any time remained thereafter. Mr. Kraft alleged that this action constituted the imposition of an un-established and unrecorded rule limiting public comment in violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)).

On November 22, 2013, this office forwarded a copy of Mr. Kraft's Request for Review to the Board and asked it to respond to Mr. Kraft's allegation, to clarify the Board's policies on public comment during open meetings, and to provide this office with a copy of any written Board policy on public comment. On December 16, 2013, this office received the Board's response, which stated that its Rules of Order provide rules regarding public comment and give the Chairman the authority to recognize speakers and discretion over the order in which

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to do so. In addition, the Board stated that Mr. Kraft was not denied the opportunity to speak at the meeting; rather, "[the Chairman] 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."¹ On January 2, 2014, Mr. Kraft replied that nothing in the Board's Rules of Order provides that Vermilion County residents may be given precedence to comment before non-residents, and that there is a difference between the Chairman's authority to recognize speakers and the extemporaneous promulgation of a rule providing that county residents shall be permitted to speak before non-county residents.

DETERMINATION

Section 2.06(g) of OMA provides: "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *See, e.g., DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶24 (2012). In accordance with its plain language, this office construes section 2.06(g) of OMA as conferring a right on members of the public to address public bodies, subject only to a public body's established and recorded rules. We note that such rules must be reasonable and must promote, rather than discourage, public participation. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009) (examining reasonableness of city council's rules for public comment); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 25020, issued August 23, 2013.

The Board has provided this office with a copy of its current Rules of Order. Rule 8, titled "Audience Participation," provides:

Audience comments will be heard at regular and special meetings of the County Board at the time appointed in 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.²

¹Letter from William T. Donahue, Assistant State's Attorney/Civil Division, Vermilion County Board, to Josh Jones, Assistant Attorney General, Public Access Bureau (December 12, 2013).

²Vermilion County Board, Rules of Order (printed December 2012), available at <http://www.co.vermilion.il.us/ctybrd/RulesOfOrder.pdf>

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This rule does not expressly provide that Vermilion County residents seeking to comment may be given precedence to speak before non-residents, nor does the Board claim that it does; instead, the Board asserts that its Rules of Order authorize the Chairman, as presiding officer, to recognize speakers in the sequence he deems appropriate. The Board does not dispute that the Chairman stated that he would allow Vermilion County residents to speak before any others during the public comment portion of the November 12, 2013, Board meeting. Establishing the precedence in which persons are permitted to address the Board based upon the county of their residence goes beyond merely recognizing individual speakers; it is a rule governing public comment. **Because the Vermilion County Board had not adopted such a rule in advance of its November 12, 2013, Board meeting, the Board violated section 2.06(g) of OMA by giving Vermilion County residents priority to speak before non-Vermilion County residents.**

Although it is not necessary to address the substantive propriety of a rule that would permit county residents to speak prior to non-county residents in order to resolve this specific Request for Review, **it is nonetheless clear that such a rule would raise significant legal issues.** For example, if comments by county residents occupied the entire period allotted for public comment, then non-county residents could be excluded from speaking regardless of the nature or importance of the matter they wished to bring to the Board's attention. Moreover, the County asserts that the Chairman gave precedence to Vermilion County residents because they are the persons "we impact greatest, the people who live here and pay taxes." However, given that the actions of a county board may have a substantial, and in some cases, greater impact on residents of surrounding counties, **there is no justification for basing the opportunity to address the Board solely on the speaker's residency.**

CONCLUSION

The Public Access Counselor concludes that the Board violated section 2.06(g) of OMA by imposing an arbitrary and extemporaneous rule affording Vermilion County residents precedence in addressing the Board during its November 12, 2013, meeting. The Board is directed to provide for public comment at all future Board meetings only in accordance with its established and recorded rules that are consistent with section 2.06(g) of OMA. Because no one was denied the opportunity to speak at the November 12, 2013, Board meeting, no remedial action is necessary at this time.

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, you may contact me at (312) 814-1679 or the Chicago address on the first page of this letter. This letter shall serve to close this matter.

Very truly yours,



JOSH JONES
Assistant Attorney General
Public Access Bureau

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cc: Mr. William T. Donahue
Assistant State's Attorney/Civil Division
Vermillion County State's Attorney
6 North Vermillion Street
Danville, Illinois 61832