



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

February 7, 2014

Via electronic mail

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Via electronic mail

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RE: FOIA Requests for Review - 2013 PAC 25005, 25018, 25034, 25620

Dear Mr. Allen, Mr. Bogue, Mr. Schneider, Mr. Pufahl, and Mr. Griffith:

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 Edgar County Board (Board) violated OMA by limiting Mr. Kirk Allen's time to address the Board at its June 12, 2013, meeting in violation of its rules governing public comment.

BACKGROUND

On June 20, 2013, this office received a Request for Review (2013 PAC 25005) from Mr. Robert O. Bogue alleging that the Board violated OMA during the public comment

Mr. Kirk Allen
Mr. Robert O. Bogue
Mr. Al Schneider
Mr. Delmar Pufahl
Mr. August H. Griffin
February 7, 2014
Page 2

portion of its June 12, 2013, meeting by cutting short the time Mr. Allen was allowed to speak under the Board's rules, and that the Board did so based on the content of Mr. Allen's speech. On June 21, 2013, this office received a nearly identical Request for Review (2013 PAC 25018) from Mr. Al Schneider. On June 24, 2013, this office received another nearly identical Request for Review (2013 PAC 25034) from Mr. Delmar Pufahl. In addition, on August 11, 2013, Mr. Allen submitted a Request for Review (2013 PAC 25620) consisting of the same allegation. Because each complaint alleges almost identical facts and raises the same issue, this office is consolidating these matters in this determination.

The complaints allege that Mr. Allen was in the midst of publicly addressing the Board when a medical emergency occurred in the hallway behind him. Several people, including Mr. Allen, the then-Chairman of the Board, and other Board members, left the meeting to assist a woman who had collapsed. The complaints allege that the meeting was effectively suspended about four minutes into Mr. Allen's presentation because a majority of a quorum of the Board was no longer present in the meeting room because of the emergency. When the meeting resumed, the complaints allege, Mr. Allen should have been permitted, under the Board's own rules, another minute to address the Board. Instead, then-Board Chairman Chris Patrick informed Mr. Allen that he was done and, when Mr. Allen attempted to resume speaking, directed a sheriff's deputy to remove him from the meeting.

All four Requests for Review reference a 37-minute, 14-second video of the meeting that is available on the Internet.¹ The recording shows Mr. Allen beginning to address the board at minute 6:39 of the recording, and rushing out of the room at minute 10:00 of the recording to assist a woman who had collapsed; Mr. Allen was followed out of the room by one of the Board members. Other Board members subsequently left the room, including Mr. Patrick. By minute 10:50 of the recording, at least four Board members, a quorum, had returned to the room, but discussion of public business did not resume. Mr. Allen returned to the room at minute 18:12 of the recording, and sat down. At minute 20:07 of the recording, Chairman Patrick returned to the room, and Mr. Allen returned to the podium at minute 20:46 of the recording; Chairman Patrick indicated that proceedings should wait until the Board clerk returned. The clerk returned, and at minute 21:07 of the recording, the Chairman stated "Mr. Allen, take your seat. You're done."² Mr. Allen protested that he had not used his full five

¹Edgar County Board Meeting, June 12, 2013, available at <http://www.youtube.com/watch?v=wHeefLw78aU>.

²Edgar County Board, Meeting, June 12, 2013, available at <http://www.youtube.com/watch?v=wHeefLw78aU>, at 21:07.

Mr. Kirk Allen
Mr. Robert O. Bogue
Mr. Al Schneider
Mr. Delmar Pufahl
Mr. August H. Griffin
February 7, 2014
Page 3

minutes of public comment, at which point Chairman Patrick directed a sheriff's deputy to remove Mr. Allen from the Boardroom, which he did. The video shows that the Board allowed at least two other speakers time for public comment after Mr. Allen's removal.

On July 2, 2013, this office forwarded copies of the Request for Review submitted by Mr. Bogue and Mr. Schneider to the Board and requested a response to the allegations. On July 8, 2013, this office also forwarded a copy of Mr. Pufahl's Request for Review to the Board and requested a response. On July 15, 2013, the Board responded by contending that none of those individuals were impaired by the Board's actions because the Board did not prevent them for speaking during the public comment portion of the meeting. Although the Board agreed that some Board members left the meeting to aid the woman who had collapsed, "[t]here was no official suspension of the meeting."³ **The Board contended that the woman in question became upset because of remarks by the speaker who preceded Mr. Allen, and that "[b]ecause of the medical interruption in the meeting, Mr. Patrick deemed it necessary to regain control of the meeting and avoid further emotional stress."**

On August 29, 2013, this office forwarded a copy of Mr. Allen's Request for Review to the Board and asked it to respond to his allegations. **On September 13, 2013, the Board responded:**

The timeline Mr. Allen has provided is not in dispute. However, he was not directed to stop talking. He chose to do so in order to render assistance during the medical emergency. The Board does appreciate his efforts as a first responder.

This was an unfortunate event and the Board apologizes for any inconvenience it has caused Mr. Allen. The Board would like to extend an invitation to Mr. Allen to use his forfeited time during the Public Comment portion of the next County Board meeting.⁴

³Letter from August H. Griffin, Edgar County Clerk and Recorder, to Rob Olmstead, Assistant Attorney General, Public Access Bureau (July 15, 2013)

⁴Letter from August H. Griffin, Edgar County Clerk, to Steve Silverman, Assistant Attorney General (September 13, 2013).

Mr. Kirk Allen
Mr. Robert O. Bogue
Mr. Al Schneider
Mr. Delmar Pufahl
Mr. August H. Griffin
February 7, 2014
Page 4

The Board supplied a copy of its rules for public comment, which provide "that any person who wishes to address the Edgar County Board and its Committees * * * shall be given five (5) minutes to address the Board."⁵

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that at meetings of public bodies "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

The Board's rules for public comment allow members of the public five minutes for public comment. The requesters contend that the Board violated its own five-minute rule, and thus violated Section 2.06(g) of OMA. This office finds that the recording shows a medical emergency interrupted the meeting, resulting in Mr. Allen as well as the Chairman of the Board and other Board members leaving the meeting room. The Board emphasizes that it did not prevent Mr. Allen from speaking during this medical emergency, but the Chairman did not permit proceedings to resume until he and the Clerk returned. Therefore, the medical emergency effectively suspended the public comment portion of the meeting in which members of the public are guaranteed an opportunity to address public officials under the rules established and recorded by the public body. It is undisputed that Mr. Kraft only used about four minutes of the five-minute period allotted under the Board's rules.

The Board lacked a valid basis to bar Mr. Allen from completing his five-minute public comment period once the meeting resumed. A public body may reasonably terminate a speaker's opportunity for public comment if the comments are profane or disruptive. See *White v. City of Norwalk*, 900 F.2d 1421, 1426 (9th Cir. 1990); see also Ill. Att'y Gen. PAC Req. Rev. Ltr. 12909, at 2 issued May 12, 2011 ("a rule allowing the public body to cut off or prevent comments that are irrelevant, repetitious, or disruptive would not likely be considered unreasonable."). The Board appears to allege that it was justified in preventing from Mr. Allen from completing his comments because the speaker who preceded him made allegedly offensive comments. However, the recording shows that Mr. Allen was neither disruptive nor profane during his comments, and that he was cooperative when the Board Chairman ordered him to be removed from the meeting. There is no indication that restricting Mr. Allen's public comment was necessary to maintain order. Notably, the Board permitted additional speakers to exercise

⁵Edgar County Board Resolution to Address Public [Officials] During County Board Meetings and Committee Meetings, adopted January 11, 2012.

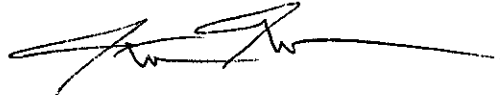
Mr. Kirk Allen
Mr. Robert O. Bogue
Mr. Al Schneider
Mr. Delmar Pufahl
Mr. August H. Griffin
February 7, 2014
Page 5

their right to public comment after barring Mr. Allen from speaking. Under these circumstances, we conclude that the Board violated Section 2.06(b) of OMA by unreasonably restricting Mr. Allen's right to public comment.

We would be remiss, however, to disregard the unusual circumstances that led to this violation. We are not presented with a situation in which the Board arbitrarily refused to permit Mr. Allen an opportunity to speak, for example, or terminated his comments based upon their content. The Board apologized to Mr. Allen for cutting short his comments and offered to provide him additional time for comments at its next meeting. Under these circumstances, this office concludes that no additional remedial action by the Board is required.

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, please contact me at (312) 814-6756. This letter shall serve to close this matter.

Very truly yours,



STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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