

From: John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944

October 3, 2014

To: Tola Sobitan  
Assistant Attorney General  
Public Access Bureau  
100 West Randolph Street  
Chicago, Illinois 60601

Re: OME Request for Review – 2014 PAC 30969

Ms. Sobitan:

I will respond below to the answers provided by the College of DuPage (“COD”) in their September 26, 2014 letter.

### **Allegation No. 1**

*The COD claims there is no requirement in the Open Meetings Act (“OMA”) that meetings start on time and that it is quite common for public bodies to start their meetings late.*

Section 2.01 of the OMA (5 ILCS 120/2.01 (West 2912)) provides, in pertinent part, that “[a]ll meetings required by this Act to be public shall be held at *specified times* and places which are convenient and open to the public.” (Emphasis added.) Section 2,02(a) of the Act requires a public body to post an agenda for each regular meeting at least 24 hours before the meeting commences. *See 2013 PAC 24619 and 2013 PAC 24620.*

The agenda for the Board’s August 21, 2014, meeting clearly indicated that the meeting would commence at 7:00 p.m. This meeting did not commence until 7:21 p.m. Whether all members of the public body were present at the *specified time* is irrelevant, and I suggest that the arrival of almost all of the board members at approximately 7:20 gives the appearance that they were present in the building and were conducting some other type of business outside the public view. The physical presence of all members of the board is not a requirement to commence a meeting, only a quorum of the board is required to commence a meeting for the purposes of taking action, with a majority of a quorum invoking the requirements of the OMA.

The *specified time* to commence this meeting was published as 7:00 p.m. There was no indication to the public why there was a delay, if the meeting was cancelled, if they were waiting on all members to arrive, if they were waiting on a quorum to arrive, or

any other indication as to why the meeting did not commence at the *specified time* published on the agenda. If we allow this behavior to continue, then we must also determine at what point it become unreasonable. Is five minutes reasonable? 30 minutes? 1 hour? 5 hours? Anytime during the same calendar day?

## **Allegation No. 2**

First, in my complaint I stated the “*President of the Board of Trustees*” and I believe a person of average intelligence could determine that I was not referring the President of the College. Nancy Rogers, from Robbins Schwartz, is simply trying to marginalize this complaint.

COD’s continued requests to have allegations denied simply because I did not specifically cite a section of the Act that I alleged they violated should not be considered. There is no specific requirement that a person filing a Request for Review with the PAC cite any portion of the Act in their allegations. COD’s reference to PAC Op. 14-003 is not applicable as that opinion refers to changes made in removing items from an agenda prior to a meeting commencing.

Furthermore, this allegation is more appropriately discussed in Allegation Nos. 3 and 4.

## **Allegation No. 3**

“Established Rules” can come in many forms; the name placed on an approved and published written document does not necessarily determine if it is the only controlling document for a specific rule. All of the COD’s written documentation referring to meetings and public comment should be taken as a whole when talking about the right of a person to speak at a meeting. Typical, or traditional past patterns of behavior, are also considered “established rules”, particularly when their own “*Board Protocol*”, published on their website, states in writing what the past pattern on public comment has been. COD even admits that their Meeting Preparation Protocol “*it is an observation of the pattern of typical board meetings*”, or a traditional pattern of behavior.

The board chairman did place immediate, arbitrary, unestablished and unrecorded rules for public comment in place during this meeting, and did this after the board voted to adopt and approve the agenda as written, and without further approval of the board. These unfair rules split the public comments section further than it was already split on the agenda.

To be clear, I am not claiming the right to dictate when my personal comments will take place. Rather, I am claiming that the COD has violated Section 2.06(g) by the implementation of unreasonable rules for public comment and by not adhering to their own established and recorded rules.

#### **Allegation No. 4**

*COD seems to think that I claimed some type of “illegal discrimination” on a “protected class” of people. That is simply not the case.*

My allegation, and it is supported by their own published agenda, is that the Board placed speakers into “classes” of people, and put those selected classes of people in a particular order for public comment purposes. By doing that, they discriminated based on the classes they placed people into. This allegation is not necessarily an allegation of discrimination, but rather an allegation of a violation of Section 2.06(g) of the Act (unreasonable rules), and as such falls under the scope of the PAC’s request for review process.

I agree that a public body can establish rules, but I also understand that any such rules must be reasonable and must enhance the ability of the public to address the board, not place additional restrictions on it. In this case, the Board gladly heard mainly from supporters of the College prior to cutting off the remainder of the speakers in order to conduct the business of the board. This action of the placing of speakers into classes meant that opponents of an extremely controversial issue were not afforded the same opportunities to speak *prior to* the board voting on it. It is clear that COD is upset that the class of people known by them as “nonresidents” want to speak to them by their offensive and false assumption that “*he is from Edgar County and wants to go first.*”

In 2013 PAC 26891, the PAC recognized that any “*established and recorded rules must be reasonable and must promote, rather than discourage, public participation.*” The PAC further talked about the substantive propriety of a rule that would permit county residents to speak prior to non-county residents, but did not address it in that determination, however, the PAC did state that actions of the board could have a substantial, or even greater, impact on non-residents, and that there was no justification for basing the opportunity to address the Board solely on the speaker’s residency. I suggest here that the same holds true for any other reasons used to base an opportunity to speak. The Act does not distinguish between classes of people and their ability to address the public body, and any such rules are not reasonable and do not enhance the ability of the public to address the Board.

#### **Allegation No. 5**

In this allegation, I allege another violation of Section 2.06(g) in that the chairman made an immediate and arbitrary decision to disallow use of the College’s projector system to enhance the ability to address the public body. There were no established and recorded rules prohibiting its use. COD’s definition of “*addressing*” may differ from other definitions. While “*address*” certainly means “*speak*”, the term “*speak*” also means “*to communicate with*”, and I am certain that all court decisions related to “*speaking*” or

“*communicating with*” a public body or anyone else does not limit that term to mean only verbal speech. I am not an attorney, so I must leave that interpretation up to the PAC in the hopes that it will define the term in such a way as to *enhance* the ability of the public to address the board.

The subject of certain items being off-limits to the public during meetings was partially addressed in Ill. Att’y Gen. Inf. Op. No. I-94-007. In this opinion the PAC recognized that the electrical outlet belonged to the public, not to the public body, and that use of it further enhanced the public’s ability to record open meetings.

The same can be said for the public projector and laptop. The “*historical norm*” for use of this equipment during public comment was set during prior meetings when use of it was allowed by people wishing to address the board. Additionally, the COD employee even directed the speaker that the PowerPoint presentation must be uploaded to the COD laptop that was attached to the speaker’s podium, prior to the start of the meeting so it would be ready to display. This shows the intent of allowance since the COD employee knew the usual process prior to the meeting even starting. Additionally, the Board did not have any rules established that prohibited its use, and in fact allowed its use by the public during previous meetings.

Contrary to COD’s assertions, nobody wanted to “*appropriate*”, as defined in the Merriam-Webster Online Dictionary as to “*take or use in a way that is illegal or unfair*” or to “*take exclusive possession of*”, any equipment and I find the use of that word towards the public as offense and inappropriate. No person attempted to demand the College take any unreasonable effort to make the equipment available. The fact is that the equipment was already available, operational, present, sitting on top of the speaker’s podium, turned on, with the speaker’s slideshow already loaded onto it, connected to the projector that was already turned on and projecting, and only required the COD employee already sitting at the control board to use one finger and push one button.

I do not believe that any person expects unfettered access to equipment or for the Board to go out of their way to set-up and provide any equipment. They have no problem with the speaker using the microphone that is mounted less than 18 inches above the laptop on the same speaker’s podium.

## **Allegation No. 6**

This allegation relates to a violation of Section 2 in that all meetings of a public body shall be open to the public, and that they may hold closed meetings (closed to the public) to discuss items falling under certain exceptions. The intent was to allow the public body to hold meetings for discussion of specific items in a setting that is closed to the public. There is no authorization for a public body to hold a closed meeting to exclude some of its own members. If the legislature had intended for a public body to select which of their members that would be allowed in or out of closed sessions, it would have certainly inserted that language in the Act. This is within the scope of the AG’s review process and a vital part of the Open Meetings Act. The board chairman told

Hamilton that she had to leave the closed session, there was at least one large police officer in the area, she felt that she would be escorted out if she did not comply with Chairman Birt's directive.

### **Allegation No. 7**

This allegation relates to the agenda items not providing the public with enough information to determine whether they wanted to attend a specific meeting or not. In this situation, the agenda only listed an item as "*Approval of Board Resolution of Censure of Board Trustee*" without including the actual proposed resolution in the board packet that was available to anyone wishing to download it. Therefore, the public had no way of knowing who was being censured and did not know the extent of the censure.

Included in the "*Resolution of Censure of Board Trustee*" is hidden language that could conceivably have devastating financial impacts on the College, district taxpayers, and individual board members. This is found in Section 5 of the resolution and not only affects the censured Trustee, but affects all Board members including the Student Trustee who is a statutory member of the Board. This language would be particularly offensive to any member of the general public that a student trustee could be placed in this position without prior notice. Had this portion been placed on the agenda properly more people most certainly would have attended the meeting to voice their displeasure. Also included in this resolution of censure is language that potentially places a financial burden on individual board members, to include the Student Trustee board member.

Censure is define in Merriam-Webster Online Dictionary as "*to officially criticize someone strongly and publicly*" or "*an official reprimand.*" The language of this resolution clearly encompasses much more than simply the censure of a trustee.

Please consider the above information in your determination and please notify me in the event that the COD is afforded the opportunity to further respond to the request for review or to any of my comments above,

Electronic communication is preferred.

Thanks for your consideration of these matters of great public interest,

John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944

Ph: xxxxxxxxxxxxxxxxxxxx  
Email: xxxxxxxxxxxxxxxxxxxx