

November 23, 2014

Bejamin Reed
Assistant Attorney General
Office of the Attorney General
Public Access Bureau
500 South Second Street
Springfield, Illinois 62706

Re: OMA Request for Review – 2014 PAC 31511

Mr. Reed,

I am not an attorney, so I will answer COD's response as best I can, using the "Allegation" numbers in their response to your office.

Allegation Number 1

- - I alleged that COD's public speaking policy was voted on, approved, and implemented all during the same meeting. I quoted Section 2.06(g) where it states the rules must be established and recorded. These were not.

- - COD seems to think that if they put a draft, unapproved copy of a new policy in their board packet, then it is recorded. I disagree. The Illinois Attorney General has determined in previous binding opinions that any rules must be established and recorded – prior to the meeting they take effect. Of what good is requiring the establishing and recording of rules, if a public body can implement new rules any time the public body feels like changing them. This could allow one set of rules at the first public comment session, then a new policy that changed rules for the second public comment session. The college thinks they can do this at every meeting and at any time during the meeting. They are wrong.

Additionally, COD violated its own policy on changing policies:

The Board of Trustees – Operation of the Board 5-85 (A copy is provided on the last page of this letter)

Formulation of Board Policy:

The authority and responsibility to enact College policy rests with the Board of Trustees. The Board will continually monitor existing policies of the College to ensure their currency and applicability to existing conditions and will update as necessary and appropriate. In formulating board policy for the Board's consideration, the President will notify the Shared Governance Council (or its successor) of impending changes to existing policy, or proposed new policy, and where appropriate, seek input from stakeholders. A policy will require two readings by the Board prior to adopting. The readings will be agenda items at meetings of the Board.

Based on this COD Policy Number 5-85, The board violated its own policy by voting on this policy change without input from stakeholders, without two readings prior to adopting, and by its immediate implementation.

- - COD doesn't see where I point to unreasonable rules, but they are contained in the remainder of the complaint.

- - COD thinks they can further restrict the public's ability by implementing rules that do so, stating I did not provide a citation – while at the same time not providing a citation stating they can further restrict the public's ability to address the board.

Allegation Number 2

The Open Meetings Act has designated these meetings as a public forum created as "*a place or channel of communication for use by the public at large....*" This is a "Limited Public Forum" and remains a First Amendment protected fora while public is authorized to speak. Debate over public issues, including qualifications and performance of public officials and employees, lies at the heart of the First Amendment.

- a) This is simply a subject matter restriction.
- b) COD claims the rule stating that "all speakers must address their comments to the chair" is somehow not going to be enforced. What other parts of their policy are not going to be enforced? Why have the rule written if it does not apply? It is stated in their policy, and violates the Act.
- c) My point in this allegation is that speech that is "personally disrespectful" of board members, or speech that the chair can decide she doesn't like by classifying it as "abusive" cannot be restricted. It is a content based restriction.
- d) My claim was that the equipment belongs to the people, the college manages it. The equipment is present at the podium, turned on, connected to the projectors that are turned on, and have previously been used by speakers and the public during meetings. It takes no additional work or effort by any staff members for a public speaker to use the devices. COD changed their "past practice" by restricting its use once the subject matter of the speech was brought to their attention. Additionally, use of this equipment is provided during other portions of the very same meetings. The college is confused in its definition of "address", unless the only way possible to address public officials is through verbal speech, which is not the case.
- e) I frequently use still cameras and video cameras when attending public meetings. I am simply asking that the rule be applied to all cameras that are at the meeting. If the rule can be selectively applied, there is no rule.

Since these new rules also use the threat of removal from meetings, police action, and the issuance of citations, I think it prudent for the PAC and the College to address the policy as a whole prior to any implementation. This policy violates the OMA, is unclear, and open to either individual interpretation or chair interpretation.

Allegation Number 3

The chair made an immediate, arbitrary, extemporaneous decision that Laura's comments did not pertain to an agenda item, when the fact is they did pertain to the agenda items she listed. It also restricted my right to hear what Laura wanted to say. The OMA does not place any requirements of "standing" for allegations of the Act.

Allegation Number 4

With only three precious minutes to comment, the chair displayed rude, discourteous, and disrespectful attitudes towards speakers by repeatedly interrupting the speakers and demanding to know how their comments related to agenda items. The clock kept running, the chair disrupted their thought process intentionally, in an effort to further limit the time they had to address the board. This did not further enhance the ability of people to address the board.

Allegation Numbers 5 and 6

Nowhere in my complaint did I state that I wanted to go first. It appears that Mr. Florey thinks that lie will make a difference. Public comment sessions were discriminatory in nature. They placed speakers into different classes of individuals based on place of residence, topic of discussion, student or faculty, etc. No person should be forced "to the back of the bus" for any reason. This is discriminatory and further restricts the public's ability to address the board.

The college has a right to establish reasonable rules, but does not have the right to discriminate based on place of residence.

Allegation Number 7

As I stated in my original complaint:

I asked to be placed in reserved seating, as a member of the press, and even presented my press pass. I was denied the same opportunity as other reporters and relegated to the general seating area. Once again, the college has published nothing stating advanced notice requested or required, and nothing published stating reserved seating available. This arbitrary, extemporaneous decision was based on the content and tone of certain reporters, rather than generally for all members of "the press".

The college has no rules stating that only certain members of the press get reserved seating, but they denied my request as a member of the press.

Claiming Section 2.02(b) somehow notifies the college of status as news media is laughable. That section is limited to receipt of notice of meetings only, and has no bearing on “status as news media” when attending meetings. Whether reporters are “paid”, or if they are “working on a deadline” is not a legitimate reason for preferential treatment. The college also talks about “traditional media outlets” as if they get preferential treatment because they have a printed paper – even though the Glen Ellyn Patch is online only.

I never asked the college to open up the press area to all who want to sit there, only that they quit giving preferential treatment to certain media. The Press Pass I presented when requesting seating in the press area was from the Disclosure News Magazine, a print publication with one printed edition each month that is distributed throughout most of Southern Illinois. Additionally, I write articles for Illinois Leaks / Edgar County Watchdogs, and they are not-for-profit online news media, but nevertheless, news media as the State of Illinois defines news media.

I do not dispute that the college can designate an area for “press” or “media”, only that they cannot determine which media they will give the preferential treatment to.

Allegation Number 8

As stated in my original complaint, more general seating is reserved in the actual meeting room than is typically available for the public to use. Less than 15 chairs (approximation) for the general public is unreasonable. Overflow rooms should be for exceptions where large numbers unexpectedly show up.

Allegation Number 9

The college made themselves look sinister by placing 4 or 5 police officers at the meeting and locking the doors so people could not gain unimpeded entry.

Allegation Number 10

I stand by the comment in my original complaint:

The legislature has declared it to be a public policy of this State and the intent of the Open Meetings Act that all actions be taken openly and all deliberations be conducted openly. This cannot happen in whispers and notes.

Attorney General Kerner addressed this issue in 1933 when talking about secret ballots. This also applies to open meetings.

“Of what avail is an open door to the public if the proceedings are secret. The eye can see, the ear can hear, but secrecy conceals all. It is no advantage to the citizen to see a

member secretly write a name on a ballot unless he is privileged to read what is thereon written. If the vote were taken by whispering in tones so low the attending citizen could not hear, how would he know what is being done. If no record is made of how the individual members vote, of what avail is the statute providing for an open meeting with open doors."

I will add that all actions and conversations in open public meetings should be seen and heard by all those present at the meeting. "Secret" items are reserved for those specific exceptions to open meetings that the legislature has allowed as reasons for closed meetings. Board members whispering so low that they cannot be heard, and the passing of notes to each other, should never be allowed in an open meeting. Otherwise the concept of openness is defeated.



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Adopted: 3/19/09

Reviewed:

Amended: 2/24/11