



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 7, 2018

Via electronic mail

Ms. Susan Lyday
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Via electronic mail

Mr. Arlin Fritz
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Via electronic mail

Ms. Connie Forsythe
clf55@sbcglobal.net

The Honorable JoAnn Quigley
Supervisor
Wesley Township Board of Trustees
21333 West Ballou Road
Wilmington, Illinois 60481

Re: OMA Requests for Review – 2018 PAC 53822; 2018 PAC 53830;
2018 PAC 53873

Dear Ms. Lyday, Mr. Fritz, Ms. Forsythe, and Ms. Quigley:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). This office has consolidated three Requests for Review in this determination because they involve similar allegations concerning the same meeting. For the reasons discussed below, **the Wesley Township (Township) Board of Trustees (Board) improperly restricted members of the public from addressing the Board during its June 12, 2018, meeting.**

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On June 29, 2018, Ms. Susan Lyday and Mr. Arlin Fritz submitted Requests for Review (2018 PAC 53822; 2018 PAC 53830), alleging that (1) during the Board's June 12, 2018, meeting a member of the public addressed the Board but was repeatedly interrupted by members of the Board, which restricted this person's ability to fully provide public comment, and (2) not all of the individuals who wished to address the Board were given that opportunity. On July 3, 2018, Ms. Connie Forsythe submitted a Request for Review with the same allegations. In support of their allegations, all three of the Requests for Review included a link to a recording that included the public comment portion of the June 12, 2018, meeting.¹ The Requests for Review also alleged that the Board's rules governing public comment during meetings violated OMA by improperly restricting a person's right to address individual Board members.

This office sent copies of the Requests for Review to the Board and asked the Board to provide this office with a copy of any established and recorded rules governing public comment during meetings and copies of any audio or video recordings of the June 12, 2018, meeting, along with a written response to the allegations in these Requests for Review. The Board did not respond to the Public Access Bureau's request. On July 24, 2018, this office forwarded a second copy of the Requests for Review to the Board and requested that the Board promptly respond. The Board did not respond to this office's second request for information, either.

DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." The Attorney General has previously concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings." Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

¹Wesley Township Board of Trustee, Meeting, June 12, 2018, available at https://www.dropbox.com/home?preview=June+12+2018+Part+2_Segment_0_x264.mp4 (last visited August 16, 2018), 9:24-14:10.

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Public Comment

The Board has not responded to this office's written requests for copies of the above-mentioned records together with a written response to the allegations in these Requests for Review. Section 3.5(b) of OMA (5 ILCS 120/3.5(b) (West 2016)), expressly requires the Board to provide copies of the records for the Public Access Counselor's confidential review and to otherwise cooperate with this office.² Thus, by failing to respond to the Public Access Counselor the Board has violated the requirements of OMA.

This office, however, has reviewed a video recording of a portion of the open session of the June 12, 2018, meeting that was provided by Ms. Lyday, Mr. Fritz, and Ms. Forsythe with their Requests for Review. Although only members of the Board can be seen on the video recording, the members of the public who addressed the Board, and attempted to address the Board, can be heard clearly on the audio of the recording. The audio of the public comment portion demonstrates that the first member of the public who addressed the Board asked questions concerning the procedures to rent certain areas in a park. The recording showed that the Board permitted her to complete her comments then directed her to a particular form that it indicated was in the meeting room to answer her questions.³

The audio of the recording demonstrated that another member of the public then was called upon to speak and was informed that she had three minutes to address the Board. This individual began reading the Township Supervisor's acceptance speech, then attempted to cite concerns about the Township's handling of FOIA requests and other perceived Township and Board issues. During this portion of the public comment segment, however, members of the Board continuously interrupted her by stating that her comments were inappropriate and directed her to address the Board as a whole, which a member of the Board indicated was a part of its rules governing public comment during meetings. The recording shows that while this individual was still within the allotted three minutes to address the Board, the Supervisor used a

²Section 3.5(b) of FOIA provides: "Within 7 working days after receipt of the request for review, the public body shall provide copies of the records requested and shall otherwise fully cooperate with the Public Access Counselor." The Board should be mindful of its obligation to comply with this provision in the future.

³Although the public has the right to address comments to a public body during open meetings, public body members are under no obligation to respond to questions and comments during the meeting; public comment is a time for citizens to be heard. *See, e.g.*, Ill. Att'y Gen. Req. Rev. Ltr. 37391, issued January 11, 2016 (concluding that the public body's practice of answering pre-submitted questions violated OMA because citizens have a right to address the public body and public officials are not required to provide responses or answers during public comment).

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gavel in an attempt to prohibit further speech and when the individual did not stop speaking, the Board abruptly adjourned the meeting.

Although this individual made critical remarks concerning the Township Supervisor,⁴ it is not apparent from this office's review of the video recording that those comments disrupted the meeting. The recording shows that this individual was not attempting to comment outside of the designated public comment period and did not act in a profane or disorderly manner that interfered with the decorum of the meeting. Although this individual did speak in a raised voice at times, it was only after the Board attempted to limit her speech. These repeated interruptions unreasonably interfered with this individual's statutory right to address Board members. The audio of the recording also demonstrates that both before and after the Board adjourned the meeting, at least one other member of the public stated that he wished to address the Board, but he was not allowed to do so. Accordingly, this office concludes that the Board improperly restricted these individuals from addressing the Board in violation of section 2.06(g) of OMA.

Rules Governing Public Comment

The Requests for Review also alleged that the Board's rules governing public comment violate the requirements of OMA by improperly restricting a person's right to address individual Board members. The Board did not provide this office with a copy of its established and recorded rules governing public comment during meetings. This office notes, however, that it has previously determined that a public body improperly restricted an individual's right to public comment when the public body enforced a rule that required public comments to be addressed to the board as a whole as opposed to individual board members. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2014, at 5-6. In that matter, this office emphasized:

Even if [named person] had addressed an individual Council member, section 2.06(g) of OMA provides that "[a]ny

⁴It is also worth noting that this office has previously reviewed a public body's decision to prohibit a speaker from completing his public comments based on a rule that prohibited "personal attacks against others" or "rude or slanderous remarks." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3. In that matter, this office emphasized: "[W]hether a remark constitutes a 'personal attack' is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3. Because the speaker's attempt to comment at the meeting did not appear to create a disturbance or interfere with the efficiency of the proceedings, this office concluded that the public body improperly prohibited him from completing his comments. Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 4.


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person shall be permitted an opportunity to address *public officials* under the rules established and recorded by the public body." (Emphasis added.) Although a public body may establish reasonable "time, place, and manner" rules to maintain order and decorum, it is unclear that prohibiting members of the public from addressing specific public officials at a meeting is necessary to maintain order and decorum.

Likewise, here the recording shows a member of the Board indicating that its rules prohibit members of the public from addressing individual public officials at a meeting. The Board has provided no support to demonstrate why this rule is necessary to promote order and decorum at meetings, or to further any other significant governmental interest. Accordingly, this office requests that the Board permit members of the public to address individual Board members at future meetings. To the extent that the Board has established and recorded rules governing public comment, we suggest that it revise its public comment rules to remove any such prohibition.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. This letter serves to close these matters. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,


SHANNON BARNABY
Assistant Attorney General
Public Access Bureau

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