



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

August 3, 2017

Via electronic mail
Ms. Rogene Hamilton



Via electronic mail
Mr. Joseph Musso, Supervisor
Pecatonica Township Board
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com

RE: OMA Request for Review – 2017 PAC 48439

Dear Ms. Hamilton and Mr. Musso:

This determination letter is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons that follow, the Public Access Bureau concludes that the Pecatonica Township Board (Board) did not violate OMA when it changed the time of its meetings. The Board, however, did violate OMA by improperly restricting Ms. Rogene Hamilton's right to address its members at a public meeting.

On June 22, 2017, Ms. Hamilton submitted a Request for Review to the Public Access Bureau alleging that during the Board's May 16, 2017, meeting, the Board improperly limited her remarks to two minutes instead of five, attempting to change its public comment rules extemporaneously rather than following its established practice. Additionally, Ms. Hamilton alleged that sometime during May 2017, the Township Supervisor, Mr. Joseph Musso, had stated that future meetings would begin at 7:00 p.m. rather than the published time of 6:00 p.m., but that the Board neither voted on nor was given notice of that change. On June 28, 2017, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of the agenda, open session minutes, and open session recording (if one was

Ms. Rogene Hamilton
Mr. Joseph Musso
August 3, 2017
Page 2

made) of the May 16, 2017, meeting, together with a copy of its rules governing public comment and a written response to Ms. Hamilton's public comment allegations.

On July 6, 2017, the Board provided this office with copies of the agenda and open session minutes for the May 16, 2017, meeting, but did not furnish copies of any rules concerning public comment. On July 13, 2017, Mr. Musso provided a brief written response on behalf of the Board. On July 18, 2017, Ms. Hamilton submitted a reply.

DETERMINATION

"The Open Meetings Act provides that public agencies exist to aid in the conduct of the people's business, and that the intent of the Act is to assure that agency actions be taken openly and that their deliberations be conducted openly." *Gosnell v. Hogan*, 179 Ill. App. 3d 161, 171 (5th Dist. 1989).

Change in Regular Meetings Time

As a preliminary matter, this office has concluded that Ms. Hamilton's allegations with respect to the change in meeting time are unfounded. Section 2.03 of OMA (5 ILCS 120/2.03 (West 2016)) provides:

In addition to the notice required by Section 2.02, each body subject to this Act must, at the beginning of each calendar or fiscal year, prepare and make available a schedule of all its regular meetings for such calendar or fiscal year, listing the times and places of such meetings.

If a change is made in *regular meeting dates*, at least 10 days' notice of such change shall be given by publication in a newspaper of general circulation in the area in which such body functions. * * * Notice of such change shall also be posted at the principal office of the public body or, if no such office exists, at the building in which the meeting is to be held. Notice of such change shall also be supplied to those news media which have filed an annual request for notice as provided in paragraph (b) of Section 2.02. (Emphasis added.)

Under the plain language of section 2.03 of OMA, only a change in the regular meeting **dates** requires ten days' advance notice by publication. If, for example, a public body changed its regular monthly meeting from the first Monday of each month to the second Tuesday

Ms. Rogene Hamilton
Mr. Joseph Musso
August 3, 2017
Page 3

of the month, notice by publication would be required. There is no requirement to notify the public of a change in the meeting **time**, outside of posting notice and an agenda 48 hours before a meeting as required by section 2.02 of OMA.

Further, Ms. Hamilton alleges that the Township Supervisor acted outside his authority because the Board had not voted on changing the regular meeting time from 6:00 p.m. to 7:00 p.m. The requirements of OMA involve notice, the opportunity for the public to attend meetings and address public officials, and the duty of a public body to deliberate openly and conduct its business openly. Except to the limited extent required by certain provisions of the Act (for example, section 2a (5 ILCS 120/2a (West 2016)), which specifies procedures for closing a meeting to the public), OMA does not govern parliamentary procedure. Because the facts Ms. Hamilton alleged with respect to the change in regular meeting times did not indicate that the Board violated any requirement of OMA, this portion of Ms. Hamilton's Request for Review did not warrant further action by this office.

Public Comment

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." Under the plain language of section 2.06(g), a public body may restrict public comment only pursuant to rules it has established and recorded, which must tend to accommodate, rather than unreasonably limit, the right to address public officials. See Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 4, 7.

In its July 13, 2017, response to this office, the Board stated that "Ms. Hamilton's comments were limited to two minutes instead of the normal five minutes because time constraints called for it. All others who addressed the Board during the May 16th, 2017 meeting were given the same two minutes instead of the normal five minutes."¹ In reply, Ms. Hamilton stated that she was the only person who addressed the Board during the public comment portion of the meeting. She alleged that Township Supervisor Musso told her that her comment time was shortened "because of the way [she] 'behave[s] in front of people' although he did not explain what that meant."² Additionally, Ms. Hamilton explained that "the meeting would have adjourned at 6:58pm instead of 6.55pm if [she] had been given 5 minutes."³ Further, Ms.

¹Response from Joe Musso, Pecatonica Township Supervisor (July 13, 2017).

²Letter from [Rogene Hamilton] to [Marie Hollister] (July 18, 2017).

³Letter from [Rogene Hamilton] to [Marie Hollister] (July 18, 2017).

Ms. Rogene Hamilton
Mr. Joseph Musso
August 3, 2017
Page 4

Hamilton stated that "[t]wice Mr. Musso refers to the 'normal five minutes.' My response is that I am pleased to see his confirmation of the accepted time limit."⁴

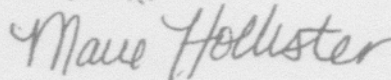
This office has reviewed the minutes and agenda of the May 16, 2017, meeting provided by the Board. In the "Community Voices" section of the minutes, Ms. Hamilton is the only person listed as having addressed the Board.⁵ No information on timing is recorded in the minutes, no recording of the meeting was provided, and the Board did not provide this office with a copy of any written rules regarding public comment. The Board did not provide this office with a copy of any rules governing public comment or otherwise demonstrate that as of its May 16, 2017, meeting, it had established and recorded a reasonable rule that allowed a member of the public's comment to be limited to two minutes. To the contrary, Township Supervisor Musso referenced five minutes as the normal amount of public comment time granted to each member of the public.

As indicated above, the Board failed to demonstrate that it acted pursuant to established and recorded rules in restricting Ms. Hamilton's public comments during its May 16, 2017, meeting. Accordingly, this office concludes that the Board violated section 2.06(g) of OMA.

There is no means for the Board to remedy its violation of section 2.06(g) at this time. However, this office suggests that if the Board wishes to impose time limitations on public comment, it should establish and record such rules as required by section 2.06(g) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this matter. If you have any questions, please contact me at (312) 793-0865 or at the Chicago address on the bottom of the first page of this letter.

Very truly yours,



MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau

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⁴Letter from [Rogene Hamilton] to [Marie Hollister] (July 18, 2017).

⁵Pecatonica Township Board, Meeting, May 16, 2017, Minutes 1.