



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

May 20, 2019

Via electronic mail
Ms. Leigh Clark

Via electronic mail
The Honorable Brian Boomer
Member, Board of Trustees
Pecatonica Township
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com

RE: OMA Request for Review – 2019 PAC 56533

Dear Ms. Clark and Mr. Boomer:

This determination 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 explained below, the Public Access Bureau concludes that the Pecatonica Township Board (Board) violated the requirements of OMA in connection with its January 15, 2019, meeting by enforcing an unreasonable public comment rule to prohibit a member of the public from addressing the Board.

On January 22, 2019, Ms. Leigh Clark submitted this Request for Review alleging that the Board did not allow her to provide public comment at its meeting on January 15, 2019, because the Board requires speakers to sign in no later than fifteen minutes prior to the start of the meeting; Ms. Clark stated that the Township Supervisor told her she could not address the Board because she signed in only thirteen minutes before the meeting started. Ms. Clark also asserts that she signed in two minutes late only because the road commissioner was initially standing in front of the sign-in sheet; once he moved, Ms. Clark discovered there was no writing instrument to sign-in, and spent time acquiring one. This office construed the Request for Review as alleging a violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

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On January 29, 2019, this office sent a copy of the Request for Review to the Board and requested a written response to Ms. Clark's allegation, together with copies of Board's rules governing public comment and the January 15, 2019, meeting agenda, minutes, and any recordings of the meeting. On February 7, 2019, the Board provided a written response and the requested materials. Ms. Clark replied on February 19, 2019, and February 20, 2019.

DETERMINATION

Under the plain language of section 2.06(g) of OMA, a public body may restrict public comment only pursuant to its established and recorded rules, which must tend to accommodate, rather than unreasonably restrict, the right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly tailored to serve significant governmental interests. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable limitations on public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4.

A rule that promotes order by requiring members of the public to sign up in advance to address a public body does not violate the First Amendment to the United States Constitution if it is reasonable in time and scope. *Timmon v. Jeffries*, No. 1:08-CV-645, 2009 WL 270043, at *3 (W.D. Mich. Jan. 30, 2009) (collection of sign-up forms immediately before public comment portion of meeting was a permissible narrowly tailored restriction); *see also Bach v. School Board of City of Virginia Beach*, 139 F. Supp. 2d 738, 741 (E.D. Va. 2001) (requiring speakers to sign up in advance of meeting is a reasonable content neutral regulation). However, an advance sign up rule that is enforced to prevent a member of the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. *Compare* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the board was required to post its agenda, imposed an unreasonable restriction on public comment); and Ill. Att'y Gen. PAC Req. Rev. Ltr. 50470, issued April 18, 2018, at 5 (rejecting a three-day advance sign up requirement and stating: "A sign up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board could accomplish the same goal of running a timely and orderly meeting, but in a much less restrictive manner."); *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39640, issued June 22, 2016, at 3 (rule requiring prospective commenters to sign up by start of meeting did not unreasonably restrict the right to public comment).

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The Public Access Bureau has previously determined that the same rule at issue in this Request for Review—the Board's requirement that an individual wishing to speak at a Board meeting must sign up no later than 15 minutes before the start of the meeting—violates section 2.06(g) of OMA.¹ Ill. Att'y Gen. PAC Req. Rev. Ltr. 51413, issued November 2, 2018. This office determined that, on the date of the meeting at issue in that matter (December 19, 2017), the 15-minute advance sign up requirement was an established and recorded Board rule. However, this office also found that "in the absence of a compelling government interest, terminating sign-up for public comment 15 minutes before the start of Board meetings unreasonably restricts public comment," and consequently, violates OMA. Ill. Att'y Gen. PAC Req. Rev. Ltr. 51413, at 4. The determination in that matter noted that the Board's "response to this office did not explain why it considers a 15 minute advance sign up rule necessary to ensure that its meetings are conducted efficiently or to maintain order," and that "requiring a written request to address public officials and setting an arbitrary early cut-off time for signing up potentially limits or reduces the number of people who are allowed to comment with no concomitant benefit to the public body." Ill. Att'y Gen. PAC Req. Rev. Ltr. 51413, at 4. Accordingly, this office requested that the Board review and revise its ordinance regulating public comment.

The January 15, 2019, meeting at which the Board enforced its 15-minute advance sign-up requirement to deny Ms. Clark the opportunity to speak occurred more than two months after this office issued its determination in 2018 PAC 51413. The Board acknowledged in its response to Ms. Clark's Request for Review that the same public comment rules that were at issue in 2018 PAC 51413 remained in place for January 15, 2019, meeting. In its response to the Request for Review, the Board again argued that its advance sign up requirement was a reasonable restriction on the right to offer comment. However, in this matter, the Board offered an explanation that it had not offered in its response in the prior Request for Review as to why it believed its advance sign up requirement was necessary:

The Pecatonica Township's public speaking ordinance allows for maximum of thirty minutes for the public to address the board. With three minutes allotted per person, any group of more than ten people would create a situation where the board may have to determine who gets to speak while also ensuring that both sides of any particular issue have equal time. This requires a time period before the meeting to allow for proper review. While having more than ten people sign up to speak at a Township meeting is not the

¹Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018).

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norm, it has occurred in the recent past and is something that we have to prepare for.^[2]

In her reply, Ms. Clark argues that the Board can adopt less restrictive means to deal with a situation in which more than ten people sign up for public comment, such as by recognizing speakers on a first come, first served basis, or simply allowing everyone who wishes to speak at that meeting to do so. With respect to the January 15, 2019, meeting at issue, Ms. Clark stated that there was only one other person who had signed up for public comment that evening.³ Ms. Clark also asserted that she routinely attends the Board's meetings and can recall only one other meeting in which a large number of individuals sought to provide public comment. Finally, in a supplemental reply, Ms. Clark stated that the Board is not consistently enforcing its 15-minute advance sign up requirement for individuals wishing to address the Board, citing events that occurred at the Board's February 19, 2019, meeting.⁴

The Board's stated reason for its 15-minute advance sign up requirement does not demonstrate that the requirement is reasonably necessary to maintain order or to ensure that its meetings are conducted efficiently. First, the asserted justification for the rule—needing time to determine how to accommodate more than ten requests to participate in public comment—appears to address a remote problem. Second, the Board has not shown that imposing a 15-minute advance sign up requirement at every meeting is the least restrictive option for addressing the rare occasion in which the number of advance sign-ups for public comment exceeds the total time allowed for public comment at meetings. For example, the Board could adopt a rule extending the total time for public comment or capping the number of speakers at any meeting in which more than 10 people wish to address the Board. The Board's more restrictive 15-minute advance sign up requirement prohibits anyone who signs in after the deadline from speaking, even at meetings at which the Board does not need additional time to manage the public

²Letter from Brian Boomer, Trustee, Pecatonica Township, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (February 7, 2019).

³The audio recording furnished for this office's review by the Board confirms Ms. Clark's assertion.

⁴In her supplemental reply, Ms. Clark also inquired as to whether her allegations about the February 19, 2019, meeting should be filed as a separate Request for Review. However, Ms. Clark's correspondence does not allege that any individual was prohibited from commenting at the February 19, 2019, meeting. Instead, she asserts that the Board violated OMA by permitting an individual who had not signed in to speak at the meeting for six minutes. The Public Access Bureau has previously determined that in order to warrant further action by this office, a Request for Review must set forth facts indicating that a member of the public attempted to address public officials during an open meeting but was improperly restricted by the public body from appropriately doing so. Ill. Att'y Gen. PAC Req. Rev. Ltr. 42017, issued June 1, 2016, at 1-2.

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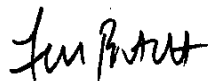
comment list. This restriction prohibits more comment than is necessary to promote the Board's objective.

The Board's response further asserts that it "has found that if we attempt to remain flexible to accommodate the public as we would prefer, we receive complaints."⁵ Although consistent application of its rules is important, the ease of application of the 15-minute advance sign up requirement is not reason enough to prohibit comments by individuals who sign in after the deadline. The rules suggested above (extending total comment time when necessary, capping the number of speakers) can be adopted and consistently applied, as they authorize such restrictions to be imposed only when more than ten people express interest in participating in public comment.

The Board's response to this Request for Review provides this office no reason to depart from its prior determination that the Board's 15-minute advance sign up requirement unreasonably restricts public comment. Accordingly, for the reasons stated above, the Public Access Bureau concludes that the Board violated section 2.06(g) of OMA at its January 15, 2019, meeting when it prohibited Ms. Clark from offering public comment because she signed up thirteen minutes prior to the start of the meeting.⁶ This office again requests that the Board review and revise its ordinance regulating public comment accordingly.

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 file. If you have any questions, you may contact me at (312) 814-6437 or the Chicago address listed on the first page of this letter.

Very truly yours,



LEAH BARTELT
Assistant Attorney General
Public Access Bureau

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⁵Letter from Brian Boomer, Trustee, Pecatonica Township, to Leah Bartelt, Assistant Attorney General, Public Access Bureau (February 7, 2019).

⁶Because we have determined that the 15-minute advance sign in requirement is an unreasonable restriction on public comment, it is not necessary to address Ms. Clark's allegation that she signed in two minutes late because of the actions of the road commissioner and the Board members managing the sign in list.