



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

KWAME RAOUL  
ATTORNEY GENERAL

October 20, 2020

*Via electronic mail*  
Mr. John Kraft

*Via electronic mail*  
Mr. Brian Boomer  
Trustee/FOIA Officer  
Pecatonica Township  
604 Berglund Road  
Pecatonica, Illinois 61063  
pectwnsp@frontier.com

RE: OMA Request for Review – 2020 PAC 61828

Dear Mr. Kraft 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 2018)). For the reasons explained below, the Public Access Bureau concludes that the Pecatonica Township Board of Trustees (Board) violated the requirements of OMA in connection with its February 18, 2020, meeting by enforcing an unreasonable public comment rule to prohibit a member of the public from addressing the Board.

In his Request for Review, Mr. Kraft alleged that the Board did not allow him to provide public comment at its February 18, 2020, regular meeting. Mr. Kraft alleged that although he wrote his name down on the Board's public comment sign-up sheet at 6:47 p.m., the Board informed him that he missed the deadline to sign-up 15 minutes before the start of the 7:00 p.m. meeting. Mr. Kraft's Request for Review alleged that the Board's actions violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)), which states 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 February 28, 2020, this office sent a copy of the Request for Review to the Board and asked it to provide copies of the February 18, 2020, meeting agenda, minutes, public comment sign-up sheet, any audio or video recordings of the meeting, and its established and recorded rules governing public comment. This office also asked for a written response to Mr. Kraft's allegations. On March 6, 2020, this office received those materials; the public comment sign-up sheet confirms that Mr. Kraft wrote his name down at 6:47 p.m. On March 9, 2020, this office forwarded a copy of the Board's written response to Mr. Kraft; he replied on March 10, 2020.

### 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. 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), *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).

In 2018 and 2019, the Public Access Bureau 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.<sup>1</sup> Ill. Att'y Gen. PAC Req. Rev. Ltr. 51413, issued November 2, 2018; Ill. Att'y Gen. PAC Req. Rev. Ltr. 56533, issued May 20, 2019. In both letters, this office determined that "in 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; Ill. Att'y Gen. PAC Req. Rev. Ltr. 56533, at 5. In a former determination, this office noted that the Board's response "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

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<sup>1</sup>Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018). In relevant part, the ordinance states that "nonmembers may address the Pecatonica Township Board if a written request is submitted to the Pecatonica Township Board for the meeting the person requesting to speak at, no less than fifteen (15) minutes prior to the start of the regular meeting of the Pecatonica Township Board."

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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.

In its response to this office, the Board confirmed that it prohibited Mr. Kraft from speaking during its February 18, 2020, meeting for "signing up too late to be considered for the public speaking portion of the meeting."<sup>2</sup> The Board set forth essentially the same argument as in the previous Requests for Review for why it did not violate section 2.06(g) of OMA:

The Township public speaking ordinance allows for a maximum of thirty minutes for public comment with a limit of three minutes per person. On the occasion that enough people wish to speak that would push us past that thirty minute maximum, the public speaking ordinance maintains a fifteen-minute gap between the end of the sign-in period and the start of the meeting which allows the Township enough time to ensure that both sides of an issue be equally heard. The fifteen-minute period is applied regardless of the number of people who wish to speak at a given meeting for the sake of consistency.<sup>[3]</sup>

In his reply, Mr. Kraft argued that "[t]he Board has articulated no compelling government interest in their 15-minute signup, in person, prior to a meeting."<sup>4</sup>

As with the previous Requests for Review, this office concludes that the Board did not demonstrate that imposing its 15-minute advance sign up requirement was reasonably necessary to maintain order or to ensure that its meeting was conducted efficiently. Because the Board did not provide any new rationale that would warrant a different result here, it is unnecessary for this office to repeat the same analysis. The Board had only five people, including Mr. Kraft, who signed-up to speak at the February 18, 2020, meeting, and it is undisputed that he signed up 13 minutes in advance. Under these circumstances, the Public Access Bureau concludes that the Board violated section 2.06(g) of OMA at its February 18,

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<sup>2</sup>Letter from Brian Boomer, Trustee/FOIA Officer, Pecatonica Township, to Christina M. Lucente-McCullough, Assistant Attorney General, Public Access Bureau (March 6, 2020).

<sup>3</sup>Letter from Brian Boomer, Trustee/FOIA Officer, Pecatonica Township, to Christina M. Lucente-McCullough, Assistant Attorney General, Public Access Bureau (March 6, 2020).


<sup>4</sup>Letter from John Kraft to Public Access Counselor (March 10, 2020).

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2020, meeting when it prohibited Mr. Kraft from addressing the Board. 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. If you have any questions, please contact me at the Chicago address on the first page of this letter, [clucentemccullough@atg.state.il.us](mailto:clucentemccullough@atg.state.il.us), or (312) 814-5383. This letter serves to close this file.

Very truly yours,

  
*Christina M. Lucente-McCullough*

CHRISTINA M. LUCENTE-MCCULLOUGH  
Assistant Attorney General  
Public Access Bureau

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