



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

November 10, 2021

Via electronic mail
Mr. Kirk Allen



Via electronic mail
Mr. Kurt Prenzler
Chairman
Madison County Board of Trustees
157 North Main Street, Suite 165
Edwardsville, Illinois 62025-1963
coboard@co.madison.il.us

RE: OMA Request for Review – 2018 PAC 54487

Dear Mr. Allen and Mr. Prenzler:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)). For the reasons explained below, the Public Access Bureau concludes that the Board of Trustees of Madison County (Board) violated the requirements of OMA in connection with its August 15, 2018, meeting by enforcing an unreasonable public comment rule to prohibit Mr. Kirk Allen from addressing the Board.

In his Request for Review, Mr. Kirk Allen alleged that the Board violated section 2.06(g) of OMA (5 ILCS 1290/2.06(g) (West 2020)) by prohibiting him from speaking during its August 15, 2018, meeting because he did not fill out a required form 53 hours in advance of the meeting. Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)), 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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In enacting section 2.06(g) of OMA, the General Assembly created a statutory right to address public officials. 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 5-6. 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) and Ill. Att'y Gen. PAC Req. Rev. Ltr. 58965, issued April 1, 2021, at 2-3 (rule requiring members of the public to sign up to comment fifteen minutes in advance of meetings unreasonably restricted the right to public comment where the public body did not demonstrate that imposing its advance sign up requirement was reasonably necessary to maintain order or to ensure that its meeting was conducted efficiently), *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 this matter, the Board confirmed in its response to this office that it prohibited Mr. Allen from addressing the Board during its August 15, 2018, meeting because his request to speak was made orally just minutes before the meeting began. At the time of the meeting, the Board's established and recorded rule provided that "[a]nyone wishing to address the Board will be required to pre-register by filing a completed request to address the Board form with the County Clerk's office by noon on the second working day before the Board meeting day[.]"¹ The Board stated in its response that "[t]he reason for requiring 53 hours notice in writing to speak to the Board is uncertain."² The Board did not explain how that rule was necessary to maintain order and decorum and conduct an efficient meeting, and no such justification is apparent. Accordingly, the Public Access Bureau concludes that the Board violated section 2.06(g) of OMA at its August 15, 2018, meeting when it prohibited Mr. Allen from addressing the Board.

The Board stated in its response that its rules were going to be reviewed and revised. If it has not already done so, this office requests that the Board review and revise its current ordinance regulating public comment to ensure that any advanced sign-in requirement is reasonably necessary to maintain order and to conduct an efficient meeting.

¹Madison County, IL, Code of Ordinances §30.02(Q)(3) (February 18, 2009).

²Letter from Kurt Penzler, CPA, Madison County Board Chairman to Edie Steinberg, [Senior Assistant Attorney General, Public Access Bureau] (September 13, 2018).

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The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, please contact me at (312) 814-5201, edie.steinberg@ilag.gov, or the Chicago address on the first page of this letter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Edie Steinberg", with a long horizontal flourish extending to the right.

EDIE STEINBERG
Senior Assistant Attorney General
Public Access Bureau

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