



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

January 25, 2023

Via electronic mail

Mr. John Kraft
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Via electronic mail

The Honorable Jack Picciolo
President
Executive Committee
Will County Veterans Assistance Commission
2400 Glenwood Avenue
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RE: OMA Request for Review – 2022 PAC 73289

Dear Mr. Kraft and Mr. Picciolo:

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 that follow, the Public Access Bureau concludes that the Executive Committee (Committee) of the Will County Veterans Assistance Commission (Commission) improperly imposed a time limit on public comments during its August 29, 2022, meeting without having established and recorded such a rule.

BACKGROUND

On August 31, 2022, Mr. John Kraft submitted a Request for Review to the Public Access Bureau alleging that the Committee violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2021 Supp.)) at its August 29, 2022, meeting. He alleged specifically that the Board improperly enforced a time limit on public comments to three minutes per person without

Mr. John Kraft
The Honorable Jack Picciolo
January 25, 2023
Page 2

having any established and recorded rules limiting the time to speak. Mr. Kraft asserted that the Committee interrupted and attempted to remove him after he continued speaking for more than three minutes. Mr. Kraft also alleged that the Committee violated OMA by not permitting a judge advocate for the Commission to attend the closed session part of the meeting. He contended that the "Public Access Counselor has previously published determinations stating that every member of a public body may attend open and closed committee meetings of committees of the public body."¹

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor[.]" The provision further provides that the Request for Review "must include a summary of the facts supporting the allegation." 5 ILCS 120/3.5(a) (West 2020).

OMA requires that all meetings of a public body remain open to the public unless the public body properly invokes an exception in section 2(c) of OMA,² and the meeting is closed in accordance with the procedure set forth in section 2a of OMA.³ The Public Access Bureau has previously determined that "[n]o provision of OMA, however, specifies who may or may not attend the closed session portion of a meeting or requires a public body such as a city council to allow other public officials to attend the meeting." Ill. Att'y Gen. PAC Req. Rev. Ltr. 68417, issued November 12, 2021, at 2. Thus, public bodies have discretion in deciding who attends a closed session. Although OMA does not prohibit a public body from permitting closed session attendance by a public body's officers or other individuals, nothing in OMA similarly requires a public body to allow closed session attendance by all of its members. Ill. Att'y Gen. PAC Req. Rev. Ltr. 73450, issued September 19, 2022, at 3-4 ("neither section 2.06(f) of OMA nor any other provision of OMA grants a member of a public body an inviolable right to participate in every closed session discussion regardless of the circumstances."); *see also* Ill. Att'y Gen. PAC Req. Rev. Ltr. 35792, issued June 22, 2015, at 2 (library board of trustees did not violate OMA by allowing employees to attend closed session). Accordingly, the Committee did not violate OMA by excluding a member from the closed session portion of the August 29, 2022, meeting.

With respect to the public comment allegation, this office forwarded a copy of the Request for Review to the Committee on September 8, 2022, and asked it to provide this office

¹E-mail from John Kraft, Edgar County Watchdogs, to AG PAC (August 31, 2022).

²5 ILCS 120/2(a), 2(c) (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

³5 ILCS 120/2a (West 2021 Supp.), as amended by Public Act 102-813, effective May 13, 2022.

Mr. John Kraft
The Honorable Jack Picciolo
January 25, 2023
Page 3

with copies of its August 29, 2022, meeting agenda and minutes, together with a written response to the matter. This office also asked for any Commission rules governing public comment. On October 20, 2022, and October 25, 2022, this office received the requested materials. On October 25, 2022, this office forwarded a copy of the Committee's response to Mr. Kraft; he did not submit a reply.

DETERMINATION

Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." This provision "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. 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; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019 (board improperly enforced a rule on public comment that was not established and recorded in violation of section 2.06(g)).

In its response to this office, the Committee stated that "the Commission's established and recorded rules regarding public comment did not exist at the time of the August 29, 2022 meeting."⁴ Further, the Committee did not dispute Mr. Kraft's assertion that it restricted his time to speak to three minutes during the meeting's public comment session. While a lack of an established and recorded rule limiting the time to speak during public comment does not necessarily mean that a public body must allow public comment to continue indefinitely, the Committee did not provide information indicating that limiting Mr. Kraft's comments was necessary to maintain decorum or that extending his time for comment would have adversely impacted the orderly transaction of public business. Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 6-7 (recognizing a public body's inherent authority to conduct its meetings in an efficient manner, but determining that there was no evidence to indicate that extending the time period for public comment would have unduly interfered with the efficiency or decorum of the meeting). Accordingly, the Committee violated section 2.06(g) of OMA at its August 29, 2022, meeting by enforcing a time limitation on public comment which was not authorized by an established and recorded rule.

⁴Letter from Jennifer Solum, Assistant Superintendent, Veterans Assistance Commission of Will County, to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, State of Illinois (October 20, 2022).

Mr. John Kraft
The Honorable Jack Picciolo
January 25, 2023
Page 4

If the Commission has not done so already, this office recommends that it adopt and record formal rules for public comment at its meetings. Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have explained 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).

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

Very truly yours,



TERESA LIM
Supervising Attorney
Public Access Bureau

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cc: *Via electronic mail*
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