

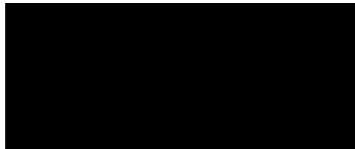


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 1, 2018

Via electronic mail



The Honorable Terry Renner
Mayor
The City of Galena
101 Green Street
Galena, Illinois 61036

RE: OMA Request for Review – 2017 PAC 50791

Dear [REDACTED] and Mayor Renner:

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 Galena City Council (Council) violated the requirements of OMA during its December 11, 2017, meeting by improperly prohibiting members of the public from addressing the Council during the public comment portion of the meeting.

BACKGROUND

On December 12, 2017, this office received [REDACTED] Request for Review alleging that during the public comment period of its December 11, 2017, meeting, the Council prevented him from speaking about "agenda item #17C-0493: 'Discussion and possible action on clarification of pre-requisites for the issuance of a Building Permit for Grace Episcopal Church Addition Project.'"¹ [REDACTED] also alleged that the Council's discussion concerning agenda item 17C-0493 included information unrelated to the agenda item. On December 18,

¹E-mail from [REDACTED] to Public Access [Bureau, Office of the Attorney General] (December 11, 2017).

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2017, this office sent a copy of the Request for Review to the Council and requested that it provide a written response to ██████████ allegation regarding the restriction on public comment. This office asked the Council to provide a copy of its established and recorded rules regarding public comment, and the agenda, open session minutes (draft form if necessary), and any audio or video recordings of the December 11, 2017, meeting. On January 3, 2018, this office received the requested materials and the Council's answer. On January 10, 2018, ██████████ replied.

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.*" (Emphasis added.) Under the plain language of section 2.06(g), a public body must establish and record rules and may restrict public comment only pursuant to those rules. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 2, 2014, at 7.

In response to this office's request for a copy of the Council's established and recorded rules regarding public comment, the Council submitted a copy of the City of Galena's "City Council Rules of Procedures" (Council Rules). Section 5, "Order of Business," of the Council Rules provides that public comments are "not to exceed 15 minutes as an item nor more than 3 minutes per speaker[.]"² The Council's agenda for the December 11, 2017, meeting, however, provides a conflicting version of the public comment rules that includes a restriction on comments regarding certain zoning matters. The agenda states:

Citizens Comments

- Not to exceed 15 minutes as an agenda item
- Not more than 3 minutes per speaker
- No testimony on zoning items where a public hearing has been conducted³

When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *See, e.g., DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶24, 962 N.E. 2d 444, 452 (2012). The plain language of section 2.06(g) requires that the rules governing public comment not only be "established" but also "recorded" by the public body. Although the

²City of Galena, Illinois, City Council Rules of Procedures 6 (May 12, 1997).

³City of Galena, Illinois City Council, Agenda Item 17C-0487, Citizens Comments (December 11, 2017).

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Council asserted that the restriction on public comments about certain zoning items has been included on every regular Council agenda since May 8, 2006, it did not explain how including the rule in agendas is the equivalent of establishing and recording the rule. Further, the Council has not presented any evidence that the conflicting provision of the Council Rules has been revoked or otherwise formally amended to include the rule restricting comment on certain zoning items. This office cannot conclude that the version of the public comment rules as stated in the December 11, 2017, agenda has been established and recorded in accordance with section 2.06(g). Accordingly, the Council Rules govern how the public addresses public officials. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 45126, issued April 6, 2017, at 3 (established and recorded public comment rule codified in village code governed rather than rule displayed during each meeting).

The Council does not dispute that it prohibited ██████████ from commenting on agenda item 17C-0493 because there had been a public Zoning Board of Appeals hearing on that matter on June 8, 2016. However, the established and recorded public comment rules as stated in the Council Rules did not permit the Council to prohibit comments about zoning matters. Therefore, this office concludes that the Council violated section 2.06(g) of OMA by imposing an unestablished and unrecorded rule limiting public comment during its December 11, 2017, meeting.

There are no means for the Council to remedy its violation in this instance. This office requests that the Council refrain from limiting public comment at any future meetings except pursuant to its established and recorded rules. In the event that the Council chooses to amend its Council Rules to reflect the statements in its December 11, 2017, agenda regarding public comment, this office notes that a public body's rules regarding public comment must tend to accommodate, rather than unreasonably restrict, the right to address public officials. *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. Because section 2.06(g) is intended to ensure that members of the public have an opportunity to address public officials at all open meetings, this office has previously determined that rules adopted under 2.06(g) are invalid when they do not reasonably "accommodate a speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." *See* Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. It is not apparent how a public body's rule would promote order and decorum by prohibiting a member of the public from addressing a matter simply because an opportunity for public comment on the same matter was provided at a meeting of another public body.

Unrelated Discussion Regarding Agenda Item

In his Request for Review, ██████████ alleged that the Council's discussion concerning agenda item 17C-0493 included information unrelated to the agenda item. Although

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section 2.02(c) of OMA (5 ILCS 120/2.02(c) (West 2016)) requires a public body's posted agenda to "set forth the general subject matter of any resolution or ordinance that will be the subject of *final action* at the meeting[]" (emphasis added), that provision does not prohibit *discussion* of matters not on an agenda by the public body. *Rice v. Board of Trustees of Adams County, Ill.*, 326 Ill. App. 3d 1120, 1123 (4th Dist. 2002) (concluding that a public body may "consider" items not specifically set forth on an agenda by deliberation and discussion, but may not take final action without sufficient advance notice on the agenda). ██████████ has not alleged that the Council took final action on any matters that arose during its discussion of agenda item 17C-0493 that were unrelated to the agenda item. Accordingly, even if the Council discussed unrelated information during its discussion of item 17C-0493, that discussion did not violate OMA.

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 (217) 524-7958 or LHarter[atg.state.il.us. This letter serves to close this file.

Very truly yours,

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LAURA S. HARTER
Assistant Attorney General
Public Access Bureau

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cc: *Via electronic mail*
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