



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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August 27, 2024

Via electronic mail



Via electronic mail

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RE: OMA Request for Review – 2023 PAC 79396

Dear [REDACTED] and Mr. Ritzman:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2022)). For the reasons that follow, the Public Access Bureau concludes that the Oswego Public Library District (District) Board of Trustees (Board) improperly restricted public comment at its October 25, 2023, meeting.

On December 18, 2023, [REDACTED] submitted the above-referenced Request for Review alleging that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2022)) by improperly restricting public comments at its October 25, 2023, meeting. Specifically, [REDACTED] alleged that a member of the public was prevented from providing public comment beyond three minutes at a time when the Board did not have established and recorded rules governing public comment. [REDACTED] enclosed a copy of a response from the District to a Freedom of Information Act (FOIA) request he submitted, in which the District stated that it had no public comment policy.

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On January 3, 2024, this office forwarded a copy of the Request for Review to the Board and asked it to provide this office with copies of its established and recorded rules for public comment, the meeting minutes and any recording of the open session of the October 25, 2023, meeting, and a written response to the OMA allegation in ██████████ Request for Review. On January 11, 2024, this office received the Board's written response together with copies of the October 25, 2023, meeting agenda,¹ minutes,² and open session video recording.³ In addition, the Board provided this office with a copy of the meeting minutes from an April 22, 1998, Board meeting⁴ and Public Comment Policy⁵ adopted by the Board after its receipt of ██████████ Request for Review on November 15, 2023. On January 12, 2024, this office forwarded a copy of the Board's written response to ██████████; counsel for ██████████ submitted a written reply on February 7, 2024.⁶

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, at 6. 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. "Nothing in OMA suggests that past practices which have not been formally incorporated into a public body's rules are established and recorded by the public body within the meaning of section 2.06(g), and may be enforced to limit public comment." Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 6 (policy restricting public comments to three minutes per person was established and recorded because it was formally adopted and incorporated into board's formal policy manual, but policy restricting the total public comment time to 15 minutes in "Welcome Handout" set out

¹Oswego Public Library District Board of Trustees, Agenda (October 25, 2023).

²Oswego Public Library District Board of Trustees, Meeting, October 25, 2023, Minutes.

³Oswego Public Library District, *October 25, 2023, Board of Trustees Meeting*, YouTube (October 25, 2023), <https://www.youtube.com/watch?v=C536VeJ22Gw>.

⁴Oswego Public Library District Board of Trustees, Meeting, April 22, 1998, Minutes.

⁵Oswego Public Library District, Public Comment Policy (adopted November 15, 2023).

██████████ written reply is dated January 29, 2024, however, this office received the reply on February 7, 2024, due to an e-mail address discrepancy.

before each meeting was not because it was not included in the policy manual and board did not claim to have taken formal action to adopt it).

When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of legislature. *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. Because OMA does not define either "established" or "recorded," the terms must be given their ordinary and popularly understood meaning. *See Skaperdas v. Country Casualty Insurance Co.*, 2015 IL 117021, ¶ 15. The dictionary can be used as a resource to ascertain the ordinary and popular meaning of words. *Banco Popular North America v. Gizynski*, 2015 IL App (1st) 142871, ¶ 47. Black's Law Dictionary defines "establish" as: "To settle, make, or fix firmly; to enact permanently." Black's Law Dictionary 688 (11th ed. 2019). "Enact" is defined as "[t]o make into law by authoritative act; to pass." Black's Law Dictionary 666 (11th ed. 2019). To "record" is defined as "[t]o deposit (an original or authentic official copy of a document) with an authority." Black's Law Dictionary 1527 (11th ed. 2019).

In its response to this office, the Board argued that it had established and recorded rules governing public comment at the time of its October 25, 2023, meeting. Referencing the April 22, 1998, meeting minutes provided to this office, the Board stated:

The Board reviewed a draft of rules for public comment at its April 22, 1998, Board meeting. The Board approved those rules by a voice vote of 7-0, thereby establishing the rules for public comment. The Board then recorded those rules for public comment in its approved minutes for the April 22, 1998 meeting.

* * *

The Board included these rules for public comment in its published agendas over the course of the next twenty-five (25) years as part of its regular custom and practice and held public comment under said rules largely without incident. However, at some point in 2023 the Board "waffled" between a three (3) minute and five (5) minute time limit for each speaker in its published Board agendas with no formal action taken to effectuate any change. [Citation.]^[7]

⁷Letter from Mark Ritzman to Matthew G. Goodman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (January 11, 2024), at 2.

The Board stated that the agendas for its September 27, 2023, October 25, 2023, and November 15, 2023, meetings provided a three-minute time limit for each speaker. On the other hand, the Board acknowledged that the agendas for its January 25, 2023, February 22, 2023, March 15, 2023, April 26, 2023, May 24, 2023, June 28, 2023, and August 23, 2023, meetings provided a five-minute time limit for each speaker. The Board indicated that at the October 25, 2023, meeting, the Board President read aloud the rules for public comment directly from the published agenda, which included a three-minute time limit. The Board also stated that at its November 15, 2023, meeting, the Board formally adopted and approved a Public Comment Policy and provided this office with a copy. The Board argued that the evidence reflects that it made a good faith effort to allow members of the public to appropriately address its members at its October 25, 2023, meeting.

In reply, [REDACTED] legal counsel explained that [REDACTED] Request for Review stemmed from his impression from previous meetings that the Board had departed from its regular practice of allowing five minutes per speaker based on the contents of the remarks being made by the public:

The District has now responded to you claiming it passed a motion in 1998 to print a public comment policy on each of its agendas. That policy, (which was not, in fact, printed on all agendas since 1998), indicated that public comment would be limited to three minutes. While the District admits that it "waffled at some point in 2023" in the enforcement of the three-minute limit, in fact the Board routinely permitted comments for five minutes on **all meeting agendas** since January 2019 through August 2023, as well as for several meetings in 2017 and 2018. See attached agendas.

* * *

Normally, a public body that permits speakers to address it for longer periods of time during public comment is commendable and promotes the OMA's intent of allowing interested members of the public to express their opinions and concerns. If the District were applying the longer limit uniformly without regard to the content of the speakers, the practice could perhaps be defensible, even if it violates its own time limit, as well as the OMA's requirement that a Board permit public comment in accordance with its rules. [Citation.] Now, however, the District has suddenly and selectively elected to strictly restrict speakers to three minutes

per speaker against people who engage in speech that the District does not like. (Emphasis in original.)^[8]

This office has reviewed the video recording of the public comment portion of the Board's October 25, 2023, meeting,⁹ the Board's April 22, 1998, meeting minutes, the Board's agendas from 2023, and the public comment statement on the Board's October 25, 2023, agenda. The minutes of the April 22, 1998 meeting show the Board approved a "public comment" statement for inclusion on the agendas each month", which limited public comment to three minutes per speaker.¹⁰ This office's review of the video recording confirmed that a total of six members of the public spoke during the public comment period. Four members of the public exceeded the three minute time limit and the Board President did not admonish these speakers, in contrast to the member of the public at issue in ██████████ Request for Review who was admonished by the Board President that his time was up at three minutes.¹¹ Although the Board may have "established" a public comment policy at its April 22, 1998, meeting by voting to adopt the policy under consideration at the meeting, the Board did not demonstrate that it "recorded" the policy within the meaning of section 2.06(g). The Board argued that it recorded the policy by documenting the vote to adopt the policy in meeting minutes, but the Board notably did not claim that it ever incorporated the text of the policy itself into its bylaws or formal policy manual, or post it on its website or make it available as a standalone document or within a collection of rules. A rule that is established and recorded in such a formal rulebook or made readily accessible on a public body's website or at its office provides certainty and clarity to the public by allowing the public to consult the collected rules for a definitive answer as to what they require. In contrast, the Board's answer to this office indicates that a member of the public wishing to ascertain whether the Board had established and recorded public comment rules at the time of its October 25, 2023, meeting would have had to review more than 25 years of minutes working backwards before arriving at the April 22, 1998, minutes reflecting the vote on the public comment policy. Such an effort should not be necessary to identify a public body's public comment rules, given the requirement that the rules be established and recorded. Furthermore, the Board's acknowledgment that it "waffled" between three and five minutes per speaker at various meetings prior to the October 25, 2023, meeting suggests a lack of clarity on behalf of the Board with respect to what if any rules were actually in place. No such ambiguity would have existed if the rules were recorded.

⁸Letter from Yevgeniy Bolotnikov to Matt Goodman, Assistant Attorney General, Public Access Bureau (January 29, 2024), at 2-3.

⁹Oswego Public Library District, *October 25, 2023, Board of Trustees Meeting*, YouTube at 1:10:13 – 1:32:30 (October 25, 2023), <https://www.youtube.com/watch?v=C536VeJ22Gw>.

¹⁰Oswego Public Library District Board of Trustees, Meeting, April 22, 1998, Minutes 2.

¹¹Oswego Public Library District, *October 25, 2023, Board of Trustees Meeting*, YouTube at 1:32:19 (October 25, 2023), <https://www.youtube.com/watch?v=C536VeJ22Gw>.

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Therefore, this office concludes that the Board did not have recorded public comment rules at the time of its October 25, 2023, meeting. Absent such rules, the Board lacked the necessary basis to restrict the time of any public speaker to three minutes. Accordingly, the Board violated section 2.06(g) of OMA when it limited a speaker's comments in that manner at its October 25, 2023, meeting. However, because the Board has now adopted a written public comment policy and included it in the collection of library policies on the District's website,¹² this office concludes that no further corrective action is required.¹³

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 matthew.goodman@ilag.gov.

Very truly yours,

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MATT GOODMAN
Assistant Attorney General
Public Access Bureau

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¹²Oswego Public Library District, Library Policies, <https://www.oswego.lib.il.us/about-us/library-policies/>.

¹³In his reply, ██████████ asked that this office find that the District violated FOIA because of the District's late response to his request. The Public Access Bureau may only find a violation of FOIA when a requester submits a Request for Review under section 9.5(a) of FOIA (5 ILCS 140/9.5(a) (West 2023 Supp.)), which ██████████ did not do here. ██████████ also asked this office to admonish the Board to establish a time limit for public comment that is uniformly applied to all speakers regardless of content, but the Board established a formal Public Comment Policy on November 15, 2023, that has uniform rules. ██████████ further requested that this office direct the Board to remove sections of that newly-adopted Public Comment Policy, but this Request for Review is limited to analyzing ██████████'s allegations concerning the October 25, 2023, meeting. In the event the Board applies the Public Comment Policy in a manner that unduly restricts public comment, a Request for Review of that alleged violation may be submitted at that time.