



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

June 17, 2024

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

[REDACTED]
[REDACTED]

Via electronic mail

Mr. Peter A. Pacione
Attorney for Village of Glendale Heights
STORINO, RAMELLO & DURKIN
9501 West Devon Avenue, Suite 800
Rosemont, Illinois 60018
c/o cdimopoulos@srd-law.com

RE: OMA Requests for Review – 2024 PAC 80950; 80951; 80952; 81027

Dear [REDACTED], [REDACTED], [REDACTED], [REDACTED], and Mr. Pacione:

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 Village of Glendale Heights (Village) Board of Trustees (Board) violated OMA during its April 4, 2024, regular meeting by imposing improper limitations on public comment.

BACKGROUND

On April 8, 2024, April 9, 2024, and April 13, 2024, the Public Access Bureau received Requests for Review from [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] alleging that the Board violated OMA by restricting [REDACTED]

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██████████, ██████████, ██████████, ██████████
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██████████ public comment at its April 4, 2024, meeting and adjourning the meeting without allowing additional public comments for those who wished to address the Board.

On April 16, 2024, and April 17, 2024, this office sent copies of the Requests for Review to the Board and asked it to provide a written response to the allegations that it improperly restricted public comments at its April 4, 2024, meeting. On May 8, 2024, the Board provided its response. On that same date, this office forwarded copies of the Board's responses to ██████████, ██████████, ██████████, and ██████████; they did not reply.

DETERMINATION

Section 2.06(g) of OMA¹ 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. 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)). Although OMA does not specify the nature of rules a public body may permissibly adopt, a board may adopt rules to maintain order and decorum at public meetings to ensure that meetings are conducted efficiently. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 5 (a public body may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum); *see Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008) (acknowledging that public bodies "have legitimate reasons for having rules to maintain decorum at public meetings").

In its response to this office, the Board stated that ██████████ was asked to "focus her public comments to an appropriate topic"² when she began speaking about the current conflict in Gaza because the topic did not relate to an agenda item or other Village business. The Board acknowledged, however, that resolutions calling for a ceasefire or peaceful resolution to the conflict appeared on agendas for the Board's March 21, 2024, April 18, 2024, and May 2, 2024, meetings. The Board further stated:

Section 1-6-4 of the Glendale Heights Village Code ("Code") calls for two periods of public comment during a meeting before the Village Board. A copy of Section 1-6-4 of the Code has been attached to this letter for reference. Each of those public comment

¹5 ILCS 120/2.06(g) (West 2022).

²Letter from Peter A. Pacione, Storino, Romello & Durkin, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (May 8, 2024), at [2].

periods is restricted to agenda items, and more specifically to "Unfinished or old business" and "Miscellaneous or new business". However, the Village Board has historically expanded its public comment periods to include any topic related to Village business. The Village Board does not entertain public comment related to world issues, Donald Trump, Joe Biden, and other issues not germane to the meeting agenda or Village business because a meeting before the Village Board is not the proper venue to address those matters.^[3]

The Board argued that restricting the content of public comments to agenda items is a reasonable and permissible restriction, arguing that "[s]ome courts have designated this type of forum, where public comment is confined to agenda items, as a limited public forum, which is subject to the same scrutiny as nonpublic forums, i.e., reasonableness and viewpoint neutrality."⁴

The Board cited several first amendment court decisions in support of its contention that it may limit public comments under section 2.06(g) to matters that are germane and relevant to the meeting agenda. Although first amendment case law pertaining to permissible limitations on the content of public comments during public meetings provides useful guidance,⁵ the first amendment does not define the parameters of the statutory right to address a public body during an open meeting under section 2.06(g) of OMA. OMA is a statutory scheme, and the right to address public officials under section 2.06(g) must be analyzed in the context of that statute as a whole.

During regular meetings, OMA does not preclude members of a public body from considering "items not specifically set forth in the agenda," (5 ILCS 120/2.02(a) (West 2022)), as

³Letter from Peter A. Pacione, Storino, Romello & Durkin, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (May 8, 2024), at [1-2].

⁴Letter from Peter A. Pacione, Storino, Romello & Durkin, to Benjamin J. Silver, Assistant Attorney General, Public Access Bureau (May 8, 2024), at [3]; *citing* Reza v. Pearce, 806 F. 3d 497, 502-03 (9th Cir. 2015); Rowe v. City of Cocoa, 358 F. 3d 800, 803 (11th Cir. 2004) (*per curium*).

⁵*See, e.g., Youkhanna v. City of Sterling Heights*, 934 F.3d 508, 519 (6th Cir. 2019) (city council did not violate the first amendment because its rule requiring comments to be relevant to the agenda was reasonable in light of the purpose served by the forum -- meeting to approve a settlement that would give zoning permission to build a mosque -- and because the rule limiting public comment to the agenda item was viewpoint-neutral); *Eichenlaub v. Twp. of Indiana*, 385 F.3d 274, 281 (3d Cir. 2004) ("[M]atters presented at a citizen's forum may be limited to issues germane to town government."); *White v. City of Norwalk*, 900 F.2d 1421, 1425 (9th Cir. 1990) ("[I]n dealing with agenda items, the Council does not violate the first amendment when it restricts public speakers to the subject at hand."); *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 924 (N.D. Ill. 2009) ("A council does not violate the First Amendment when it limits public participants to speaking only about subjects on the agenda.").

long as the public body does not take final action on items not listed on the agenda. Given that the public body itself is permitted to discuss matters that are not specifically listed on the agenda, a rule that would prohibit members of the public from addressing matters relevant to the business of a public body which are not listed on the agenda would impermissibly restrict the right to public comment. Accordingly, this office has determined that a rule limiting participants to speaking only on subjects listed on the agenda would exceed the scope of permissible rulemaking authorized by section 2.06(g). *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, issued August 1, 2016, at 3; Ill. Att'y Gen. PAC Req. Rev. Ltr. 45349, issued March 16, 2017, at 6.

These determinations, however, do not conclude that participants have unlimited discretion to address a public body on any issue. Rather, under section 2.06(g), a public body may establish rules that limit public comment to matters directly relevant or germane to the business of that particular public body. Otherwise, allowing the public to comment on matters unrelated to public business would impede the public body's ability to run efficient meetings. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 49820, issued January 31, 2019, at 6 (commission did not violate 2.06(g) by limiting public comment to matters that were germane to matters that the commission had the authority to consider); Ill. Att'y Gen. PAC Req. Rev. Ltr. 51665, issued February 5, 2019, at 7 (board did not violate section 2.06(g) by prohibiting speaker from commenting on highly personal matters not related to the business of the board); *Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362, 1373 (D. Kan. 1998) (city council did not violate first amendment to the United States Constitution by restricting personal comments about an appointee to a mayoral commission that were not directly relevant to the business of the public body).

This office's review of the video recording of the Board's April 4, 2024, regular meeting confirmed that the Board interrupted [REDACTED] comment as she began speaking about the current conflict in Gaza. The Village's attorney informed [REDACTED] that she may only speak on topics related to Village business. [REDACTED] indicated she would skip ahead to a topic related to Village business, and then stated: "If Glendale Heights chose to call for a ceasefire, this would not be the first time a local body of Americans stood for" before she was cut off by the Village attorney, who asserted the comment did not concern Village business.⁶ After a few moments of disagreement by members of the public, the attorney asked if anyone else would like to discuss Village business. Before any member of the public had an opportunity to respond, the Chair asked for a motion to adjourn, another member made the motion, the motion was seconded, and the Board voted to end the meeting.

The Board argued that its meetings are not the proper venue to address world issues, but resolutions calling for a ceasefire in Gaza appeared on the Board's March 21, 2024,

⁶Glendale Heights Village Board, Regular Meeting, April 4, 2024, Video Recording, <https://www.youtube.com/watch?v=MTWjVD30kow>, at 26:54-27:00.

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meeting agenda as well as the agendas for the two regular meetings that immediately followed the April 4, 2024, regular meeting. Under these circumstances, [REDACTED] was not attempting to comment on random international affairs unrelated to Village business when she was prohibited from speaking about the Gaza conflict at the April 4, 2024, meeting. Therefore, the Board violated section 2.06(g) of OMA by restricting [REDACTED] comment and ending its meeting before [REDACTED] and other members of the public had an opportunity to address the Board.

In accordance with the conclusions of this determination, this office requests that the Board instruct its presiding officers to refrain at its future meetings from prohibiting members of the public from providing public comments regarding issues of Village business, regardless of whether the matter appears on the agenda for that meeting.

The Public Access Counselor has determined that resolution of these matters does not require the issuance of a binding opinion. These files are closed. If you have any questions, please contact me at benjamin.silver@ilag.gov or (773) 590-7878.

Very truly yours,

[REDACTED]
BENJAMIN J. SILVER
Assistant Attorney General
Public Access Bureau

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