

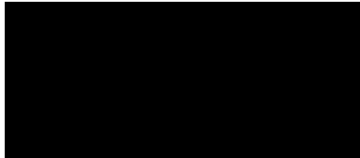


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

December 28, 2018

Via electronic mail



Via electronic mail

Steven M. Richart
Hodges Loizzi Eisenhammer Rodick & Kohn LLP
3030 Salt Creek Ln., Suite 202
Arlington Heights, IL 60005
srichart@hlerk.com

RE: OMA Requests for Review – 2018 PAC 53883

Dear [REDACTED] and Mr. Richart:

This determination letter 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 discussed below, the Public Access Bureau is unable to conclude that the Zion-Benton Township High School District 126 Board of Education (Board) violated OMA in connection with its June 28, 2018, meeting.

On July 5, 2018, [REDACTED] submitted a Request for Review alleging that the Board prohibited her husband, [REDACTED], from participating in the public comment portion of its June 28, 2018, meeting because he did not sign up to speak. On July 16, 2018, this office sent a copy of the Request for Review to the Board president and asked for a copy of the Board's public comment rules and a response to [REDACTED] allegation. On August 22, 2018, counsel for the Board furnished those materials. On September 6, 2018, [REDACTED] replied to that response. On September 17, 2018, both parties submitted additional information to this office.

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." Although OMA does not specifically address the types of public comment rules that a public body may adopt, courts have clarified that public bodies may promulgate reasonable "time, place, and manner" restrictions that are narrowly-tailored and necessary to further a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). For example, a public body may adopt reasonable rules governing public comment in order to maintain decorum and ensure that meetings are conducted efficiently. *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008); *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at 4. However, such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25; *Timmon*, 633 F. Supp. 2d at 459.

The Board's public comment rules provide that speakers may "[a]ddress the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President."¹ In her Request for Review, ██████████ alleged that after she and another member of the public addressed the Board under the fourth agenda item which designated time for public comment, ██████████ requested an opportunity to do so before the Board moved on to the next agenda item. According to ██████████ the Board president responded that it was too late and that ██████████ could not speak because he had not placed his name on the sign-up sheet. ██████████ stated that the Board's established and recorded rules governing public comment do not require speakers to sign a sign-up sheet.

The Board's response to this office acknowledged that its rules do not require speakers to sign up to speak. The Board stated that it has a longstanding practice of using a sign-up sheet to facilitate public comment, but denied that ██████████ was prohibited from speaking because he did not sign up. The Board's response asserted that the Board president only referred to ██████████ not signing the sign-up sheet because he had signed it in the past. According to the Board, ██████████ did not request an opportunity to speak until "the Board had already closed the public comment portion of the meeting agenda and moved into the next agenda item, and a motion had been made and seconded to approve the consent agenda."² The Board's meeting minutes provide:

¹Zion-Benton Township High School District 126 Board of Education Policy 2:230 (revised August 27, 2009).

²Letter from Steven M. Richart, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP (August 22, 2018), at 2.

A motion was made by Secretary Leech, seconded by Member Roberts to approve the Consent Agenda. Citizen ██████████ interrupted the business portion of the meeting and requested to address the Board. President White advised that public comment had concluded. President White called for the roll and the motion was approved by a roll call vote of members present voting 4-1.^[3]

In her reply, ██████████ reiterated that the Board president cited ██████████ not signing the sign-up sheet as a reason for denying him an opportunity to address the Board and stated that the current Board president did not conclude the public comment portion of the meeting by announcing public comment was closed or by asking the audience if anyone else wished to speak. Because of that omission, she asserted, ██████████ had no opportunity to request to speak before the Board president had moved on to the next agenda item: "While ██████████ may have interrupted the meeting, it was not a flagrant interruption, as ██████████ was only trying to address the Board to have an opportunity to speak."⁴ She stated that at the following meeting, the Board president did ask the public if anyone wished to address the Board before closing public comment and moving on to the next agenda item.

On September 17, 2018, counsel for the Board submitted an additional response stating that ██████████ did not approach the podium to speak even though ██████████ had addressed the Board from the podium and returned to her seat.

If ██████████ had wanted to speak at that time, he would have stood up and approached the podium as he has done at prior meetings and as he has witnessed others do at several meetings he has attended[.] * * * However, it appears that what happened is that he changed his mind and decided to speak only after the Board had moved on to the next agenda item. (Indeed, I am told that when he first spoke up, he explicitly stated that he had not originally intended to speak to the Board, but he wished to do so now.).^[5]

³Zion-Benton Township High School District 126 Board of Education, Regular Meeting, June 28, 2018, Minutes 1-2.

⁴Letter from ██████████ to Steve Silverman, Bureau Chief, Public Access Bureau, Office of the Attorney General (undated).

⁵E-mail from Steven M. Richart, Attorney, Hodges, Loizzi, Eisenhammer, Rodick & Kohn LLP, to [Steve] Silverman (September 17, 2018).

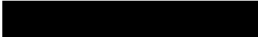
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On the same date, ██████████ replied that the Board president did not ask if any other members of the public wished to speak or "close the public comment portion of the meeting and instead went right to the next agenda item so quickly that no one in the audience, including myself a former board member and someone very well versed in the process, knew what was happening."⁶

The Board has expressly denied that it prohibited ██████████ from speaking because he did not sign the sign-up sheet that it uses to facilitate public comment. Although the Board president referred to ██████████ not signing the sign-up sheet when he denied his request to speak after the Board moved on to the next agenda item, there is insufficient evidence for this office to conclude the prohibition was based on the sign-up sheet rather than its rule that limits public comment to the designated public comment portion of the meeting. Such a rule is content neutral and promotes efficiency and decorum by preventing interruptions. *See* Ill. Att'y Gen. Req. Rev. Ltr. 42969, issued May 25, 2017 (a public body that provides an opportunity for the public to speak at the time provided for in its established and recorded rules is not required to provide additional opportunities for public comment during other parts of a meeting). Accordingly, this office concludes that the Board's rule is permissible section 2.06(g) of OMA.


If the Board had ended the public comment portion of the meeting and transitioned to the next agenda item so abruptly that members of the public did not have a meaningful opportunity to invoke their right to speak, the Board could have violated section 2.06(g) of OMA. In light of the parties' conflicting accounts, however, this office is unable to determine that the Board did so. It is unclear precisely when ██████████ determined that he wished to speak and whether he had an adequate opportunity to express that intent before the Board moved on to the next agenda item. Accordingly, this office is unable to conclude that the Board violated OMA by prohibiting ██████████ from addressing the Board after the public comment portion of the meeting ended. Nevertheless, because it appears that there may have been confusion concerning the timing of the public comment portion of the meeting, this office recommends that the Board clearly communicate its intent to conclude public comment before moving on to the next agenda item to ensure that members of the public have an adequate opportunity to invoke their statutory right to address the Board.

⁶E-mail from ██████████ to [Steve] Silverman (September 17, 2018).


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The Public Access Counselor had determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756 or ssilverman@atg.state.il.us. This file is closed.

Very truly yours,


STEVE SILVERMAN
Bureau Chief
Public Access Bureau

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