

OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

March 16, 2017

Via electronic mail



Via electronic mail

Mr. Brian Day
Corporation Counsel
Town of Normal
11 Uptown Circle
Normal, Illinois 61761
bday@normal.org

RE: OMA Request for Review – 2016 PAC 45349

Dear [REDACTED] and Mr. Day:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2015 Supp.)). For the reasons that follow, the Public Access Bureau concludes that that the Town of Normal's (Town) rules governing public comment impermissibly restrict the right of members of the public to address public officials at public meetings, and that the Normal Town Council (Council) violated OMA by prohibiting members of the public from addressing it more often than once every forty-five days.

On December 6, 2016, [REDACTED] filed this Request for Review alleging that the Town's rules for public comment violated OMA in a number of ways. In particular, he stated that the Town implemented a rule limiting members of the public to one opportunity in a forty-five day period to address public officials at public meetings. He alleged that two individuals were denied the opportunity to address the Council at a December 6, 2016, meeting¹ because they had previously commented within the last forty-five days. He also stated that he

¹As explained by the Council, the Council met on December 5, 2016, not December 6, 2016, and the reference to December 6, 2016 appears to be in error.

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would have addressed the Council about a proposed tax incentive at that meeting, but did not do so because he wanted to comment at a hearing to be held on December 19, 2016.

On December 14, 2016, this office transmitted a copy of the Request for Review to the Town mayor via e-mail, and requested that the Council furnish a written response to the allegations together with copies of the records relating to the meeting at issue and the Town's public comment rules. This office re-transmitted the Request for Review to the Town corporation counsel on January 23, 2017. On February 2, 2017, this office received the Council's written response. This office forwarded a copy of the Council's response to [REDACTED] on February 10, 2017; he replied on February 17, 2017.

DETERMINATION

Purpose of Section 2.06(g)

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2014)) provides: "**Any person** shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." (Emphasis added.)

Section 2.06(g) was added to OMA by Public Act 96-1473, and was effective as of January 1, 2011. The Council asserts that the language of 2.06(g) is unambiguous, and that "[n]othing in the text of this statute limits the authority of a public body to enact rules."² The Council argues, in effect, that a public body may regulate public comment in any manner so long as it has established and recorded rules. Under this argument, even a rule that categorically prohibits a member of the public from addressing public officials at certain public meetings would be acceptable.

A "statute should be evaluated as a whole, with each provision construed in connection with every other section." *Jackson v. Board of Election Commissioners*, 2012 IL 111928, ¶48, 975 N.E. 2d 583, 596 (2012). Section 2.06(g) is part of OMA. The intent of OMA, as well as the general policy of the State, is that the public "be given advance notice of and the right to attend all meetings at which any business of the public body is discussed or acted upon in any way." 5 ILCS 120/1 (West 2014); *see also* 735 ILCS 110/5 (West 2014) ("[I]t is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence."). OMA therefore requires, among other things, proper posting of a notice and an agenda for *every* public meeting (5 ILCS 120/2.02 (West 2014)) and holding those meetings at specified times and places that are convenient and open to the public (5 ILCS 102/2.01 (West 2014)). Section 2.06(g) of OMA cannot reasonably

²Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 7.

be construed as granting members of the public a statutory right to address public officials on the one hand while permitting public bodies to unconditionally abridge that right. Such an interpretation would render section 2.06(g) meaningless and yield absurd results that are inconsistent with OMA's clear purpose of allowing members of the public to attend every public meeting and contrary to the public policy—articulated in section 5 of the Citizen Participation Act—that encourages public participation in government affairs. See *People v. Hunter*, 2013 IL 114100, ¶13, 986 N.E.2d 1185, 1189 (2013) (a reviewing body "presumes that the legislature did not intend to create absurd, inconvenient, or unjust results."); *Sylvester v. Industrial Comm'n*, 197 Ill. 2d 225, 232 (2001) (a reviewing body "must construe the statute so that each word, clause, and sentence, if possible, is given a reasonable meaning and not rendered superfluous [citation], avoiding an interpretation which would render any portion of the statute meaningless or void.").

The Council also asserts that the legislative history of Public Act 96-1473 supports its broad interpretation of the scope of permissible rulemaking. It points to a Senate amendment of the original bill that removed a provision that public comment is to be allowed at each public meeting, as well as statements during legislative debate that it claims demonstrate the intent was to provide public bodies with "the unfettered ability to create comment rules."³ That history does not provide persuasive support for the Council's assertion that the General Assembly intended to allow a public body to promulgate any rules under OMA, no matter how much they restricted the statutory right to address public officials. As described above, the amendment to OMA must be read together with the purposes and other sections of OMA. Further, the amendment's own language, which provided members of the public with a statutory right to address public officials that had not existed previously, must also have meaning. See *People v. Woodward*, 175 Ill. 2d 435, 444 (1997) (a reviewing body "must consider the language of an amended statute in light of the need for amendment and the purpose it serves."). If public bodies have unlimited discretion to impose restrictive rules under section 2.06(g) of OMA, the right to address public officials articulated by that provision would be no right at all. The General Assembly could not have intended such a result.

The Attorney General has opined that "public bodies may generally promulgate reasonable 'time, place and manner' regulations that are necessary to further a significant governmental interest. * * * [T]he primary purpose of adopting rules governing public comment pursuant to section 2.06(g) of OMA is to accommodate the speaker's statutory right to address the public body, while ensuring that the public body can maintain order and decorum at public meetings." Ill. Att'y Gen. Pub. Acc. Op. 14-012, issued September 30, 2014, at 5-6. Because section 2.06(g) is intended to ensure that members of the public have an opportunity to address public officials at 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

³Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 8.

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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. 14-012, at 6 (rule requiring members of the public to provide five working days' advance notice of public comment unreasonably restricted their statutory right). Likewise, this office reviews the rule at issue here in terms of its reasonableness and the Council's asserted significant governmental interest.

The 45-Day Rule

In relevant part, the Town's rules governing public comment at Council and other Town meetings state: "Individuals shall be limited to address a public body no more than one time in a in a forty-five day agenda period." Town of Normal Resolution No. 4612 (adopted April 18, 2011) (45-day rule). The Council holds regular meetings twice a month. In practice, the 45-day rule often means that an individual may address the Council no more frequently than every third regular meeting.

The 45-day rule exceeds the scope of permissible rulemaking authorized by section 2.06(g). The Council's response to this office asserts that the 45-day rule is viewpoint neutral and that it furthers the significant public interest of "conserving time and ensuring that others have the ability to speak."⁴ That response does not explain why this restriction is necessary to protect the significant governmental interest of conducting Council meetings in an efficient manner. Further, this office reviewed the minutes and recording of the December 5, 2016, meeting at issue here; only one person addressed the Council even though the Council extensively discussed a tax incentive proposal that appeared to be of significant public interest. There is no indication that the Council has been inundated with requests to address it at public meetings, or that the 45-day rule is necessary to advance a significant governmental interest such as conserving time so other members of the public have an adequate opportunity to address the Council.

In addition, it is likely that discussion of certain issues by the Council will continue across consecutive meetings. Moreover, multiple issues of public interest could be discussed over those same consecutive meetings. By limiting an individual's right to address the Council in consecutive meetings, the 45-day rule forces a member of the public to choose a meeting at which to address the Council and risk forfeiting the right to address the Council on subsequent occasions about that issue or another issue. Therefore, the 45-day rule could have a chilling effect on participation by the public in the public comment period and does not adequately accommodate the statutory right of "any person" to address the Council. ██████████ ██████████ alleged that two individuals wanted to address the Council at a meeting and were

⁴Letter from Brian Day, Corporation Counsel, Town of Normal, to Public Access Counselor, Office of the Attorney General (January 30, 2017), at 11.

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prohibited from doing so by the 45-day rule; the Council has not disputed this allegation.⁵ Accordingly, this office concludes that the 45-day rule impermissibly restricts public comment and the Council violated section 2.06(g) of OMA.

Additional Complaints about Public Comment Rules

In addition to the 45-day rule, ██████████ Request for Review alleged that the Council's public comment rules violated OMA in five other ways, by: (1) stating that the rules "permit" rather than "allow" a person to speak; (2) requiring two hours' advance notice of intent to speak; (3) restricting public comment to topics on the agenda; (4) limiting speaking time to a total of ten minutes; and (5) requiring citizens to provide their address and affiliation. The Public Access Bureau generally reviews a particular rule governing public comment only if there is an allegation that a citizen has been prohibited from speaking at a meeting because of that rule, as opposed to evaluating the propriety of all rules absent a specific complaint that the rules prevented a citizen from addressing officials at a meeting. In this instance ██████████ and the others were prohibited from speaking because of the 45-day rule, which this office has addressed. This office will not address whether the word "permit" is proper in the Council's rules, nor will we review whether ten minutes allows sufficient time for public comment, since there has been no allegation that a person was prohibited from addressing the Council by this rule. We emphasize that a determination by this office that one of a public body's rules for public comment violates OMA cannot be extrapolated to mean that other rules that were not specifically addressed would pass muster.

Despite the statement above, the Public Access Bureau is charged with providing advice and education with respect to OMA. *See* 15 ILCS 205/7 *et seq* (West 2014). In addition, the Council's response in this case states that some of ██████████ complaints have been previously addressed by this office. Accordingly, we will provide some additional guidance with respect to advance registration, confining discussion to agenda items, and the requirement for speakers to provide their home addresses.

The Council's response states the 2 hour notification requirement was worked out through this office in a previous Request for Review, 2013 PAC 25965. This statement is inaccurate. In that case an Assistant Attorney General in the Public Access Bureau contacted Corporation Counsel for the Town of Normal and suggested that the Council's public comment policy be revised, in an effort to informally resolve the matter. There is no record that this office reviewed or approved any changes that the Council may have made in response to that Request

⁵The Council asserted in its response to this office that ██████████ would not have been prohibited from speaking at the December 19, 2016, hearing if he had chosen to address the Council on December 5, 2016, because the subsequent hearing was not a meeting falling within the scope of the Town's public comment rules.

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for Review. Moreover, any rule enacted by the Council requiring *any* advance sign-up or notification to speak would still be subject to a request for review by any person who was denied the right to speak under that rule. The Public Access Bureau does not approve public comment rules in advance; rather this office reviews the specific facts of each allegation of an OMA violation that we receive.

Next, the Council's response states that the Town's authority to confine topics to be discussed while addressing the Council to matters "germane to the meeting agenda of the Town Council meeting"⁶ was affirmed in 2016 PAC 37631 (Ill. Att'y Gen. PAC Req. Rev. Ltr. 37631, issued December 28, 2015). That letter concluded that the Council did not violate OMA when it refused to let a citizen comment on a matter that was not related to any subject on the meeting agenda. The Council should be aware, however, that since that time the position of the Public Access Bureau has evolved. In Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, issued August 1, 2016, this office determined that because a public body may discuss matters not listed on a meeting agenda, it would be unreasonable to limit the public's ability to comment to agenda items:


OMA does not preclude members of a public body from "the consideration of items not specifically set forth in the agenda," (5 ILCS 120/2.02(a) (West 2014)), as long as the public body does not take final action on items not listed on the agenda. Given that the public body itself is able to discuss matters that are not specifically listed on the agenda, a rule that would prohibit members of the public from addressing matters that are not listed on the agenda would impermissibly restrict the right to public comment as outlined in section 2.06(g). Ill. Att'y Gen. PAC Req. Rev. Ltr. 38037, at 3.

Finally, the rules for addressing the Council provide that individuals are asked to clearly state their name, address, and whether or not they represent an organization. Please be aware that in binding opinion 14-009, the Attorney General concluded that requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA (Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7).

In accordance with the conclusions of this letter, this office requests that the Council vote to amend the Town's public comment rules to remove the 45-day rule.⁷ The Council may also wish to re-examine all of its rules governing public comment. As explained in

⁶<http://www.normal.org/854/Addressing-the-Council> (last visited March 15, 2017)


⁷The Council has informed this office that it intends to consider such an amendment to its public comment rules at its March 20, 2017, regular meeting.


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this letter, the rules should accommodate a speaker's statutory right to address the Council while ensuring that a public body can maintain order and decorum at its meetings. Rules must be reasonable and necessary to further a significant governmental interest.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter serves to close this file. If you have any questions, please contact me at (217) 782-9078 or nolson@atg.state.il.us.

Very truly yours,


NEIL P. OLSON
Deputy Public Access Counselor
Assistant Attorney General, Public Access Bureau

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