



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

Lisa Madigan  
ATTORNEY GENERAL

July 19, 2018



*Via electronic mail*  
Ms. Julia Halsted  
Deputy County Administrator  
Winnebago County  
404 Elm Street, Room 533  
Rockford, Illinois 61101  
jhalsted@WinCoIL.us

Re: OMA Request for Review – 2017 PAC 49391

Dear [REDACTED] and Ms. Halsted:

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 discussed below, this office concludes that the Board of Trustees (Board) of the County of Winnebago (County) violated OMA by prohibiting a member of the public from addressing the Board during its August 24, 2017, meeting.

On August 25, 2017, [REDACTED] submitted a Request for Review to this office alleging that he was not permitted to address the Board during the public comment portion of the August 24, 2017, meeting. Specifically, [REDACTED] alleged that the County Administrator informed him that he would not be allowed to address the Board because he failed to submit a form that the Board requires members of the public to fill out in advance of meetings in order to speak. Along with his Request for Review, [REDACTED] included a copy of a completed form requesting to address the Board at its August 10, 2017, and August 24, 2017, meetings, which he contends he properly submitted to the Board.

████████████████████  
Ms. Julia Halsted  
July 19, 2018  
Page 2

On August 30, 2017, the Public Access Bureau sent a copy of the Request for Review to the Board Chairman, who serves as the presiding officer of the Board, and asked that the Board, or its representative, provide a written response to the allegations in this Request for Review. This office also requested a copy of the Board's rules governing public comment during meetings, together with copies of the agenda and the minutes of the August 24, 2017, meeting for our review

On November 8, 2017, the Deputy County Administrator provided the Public Access Bureau with these materials. On November 9, 2017, this office forwarded a copy of the Board's written response to ██████████; he replied on November 16, 2017.

#### DETERMINATION

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)), provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 5 (all public bodies subject to the Act are required to provide an opportunity for members of the public to address public officials at open meetings); see also Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 4. Under the plain language of section 2.06(g) of OMA, public comment must be permitted in accordance with the public body's established and recorded rules.

In response to this office's request for a copy of the Board's established and recorded rules regarding public comment in a separate Request for Review, the Board submitted a copy of section 2-65 of the Winnebago County Code of Ordinances, which addresses the "Limitation of Debate" as follows:

- A. No Member shall speak a total of more than twice on the same question, unless permitted to do so by the Chair.
- B. No Member shall speak longer than three (3) minutes upon recognition, unless permitted to do so by the Chair. Any Member called to order shall immediately cease speaking, unless permitted to explain.
- C. *Non-Members may address the Board if written request is submitted to the County Board office by noon on the day of the County Board meeting for which recognition is sought. The written request must identify the name of the*

Ms. Julia Halsted

July 19, 2018

Page 3

*speaker, specify the subject matter the speaker will address, and indicate the speaker's interest in the subject. Comments shall be limited to three (3) minutes. Speakers may not address zoning matter[s] which are pending before the ZBA, Zoning Committee or the County Board. Personnel matters or pending or threatened litigation may not be addressed in open session. An individual may speak a maximum of three times per calendar year on the same topic. This prohibition shall include the repetition of the same topic in a statement on what is purported to be a different topic. Personal attacks or inappropriate language of any sort will not be tolerated.*

- D. Each person from the public will be limited to three (3) minutes.
- E. A maximum of twenty-one (21) minutes shall be allowed for non-members to speak at each meeting. If a particular item is deemed by the Chair to be controversial, the Chair shall strive to allow all sides an equal amount of time within which to speak at each meeting, subject to the twenty-one (21) minute time limit. The Chair shall determine the sequential order in which non-members will be allowed to address the Board.<sup>[1]</sup> (Emphasis added.)

In this Request for Review, the Board acknowledged that [REDACTED] submitted the required form but was nonetheless denied the opportunity to address the Board because of an "oversight to a training gap in accepting submissions and reviewing forms for inclusion on the agenda."<sup>2</sup> [REDACTED] used one form to request to speak at two separate meetings, and the Board stated that because the form was designed to be filled out for the "next County Board Meeting" the form should not have been accepted.<sup>3</sup> The Board acknowledged,

<sup>1</sup>Letter from David J. Kurlinkus, Chief of Staff and Civil Bureau, Winnebago County State's Attorney's Office, to Laura S. Harter, Assistant Attorney General (November 20, 2017), Exhibit A, Winnebago County Ordinance, ch. 2, div. 3, §2-65 (approved December 5, 2016).

<sup>2</sup>Letter from Julia Halsted, Deputy County Administrator, County of Winnebago, to Assistant Attorney General Shannon Barnaby, Office of the Illinois Attorney General (November 8, 2017).

<sup>3</sup>Letter from Julia Halsted, Deputy County Administrator, County of Winnebago, to Assistant Attorney General Shannon Barnaby, Office of the Illinois Attorney General (November 8, 2017).

Ms. Julia Halsted

July 19, 2018

Page 4

however, that it inadvertently missed the second date when preparing the "public speaker agenda," thus violating its own rule for public comment.

The Board's admission that it should have allowed [REDACTED] to speak at its August 24, 2017, meeting resolves the specific issue raised by [REDACTED] in this Request for Review. The mission of the Public Access Bureau, however, is "to provide advice and education with respect to the interpretation and implementation" of OMA. 15 ILCS 205/7(a) (West 2016). Even assuming that, by using one form to sign up for two meetings, [REDACTED] had not complied with the Board's rule, the reasonableness of this limitation on public comment is questionable.

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 Attorney General has determined that an advance sign up rule that is enforced to prevent a member of the public from addressing a public body violates OMA if it is not reasonably necessary to promote a significant governmental interest. Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6. In that binding opinion, the Attorney General concluded that a rule requiring members of the public to sign up to speak five days before a meeting violated section 2.06(g) of OMA.

Here, the Board's rules require members of the public to do more than merely notify the Board that they intend to participate in public comment. Rather than requiring the public to indicate they wish to speak immediately before or during the meeting, or by sending the County Administrator an e-mail or letter, or telephoning the County Administrator's office on the day of the meeting, the Board's rules require a person who wishes to address the Board to obtain and fill out a particular form, available at the County Board's Office, and submit it to the County Administrator before noon on the day of a meeting. Also, the Board's advance sign-up form requires citizens to submit, in addition to their names, the subject matter that they intend to address along with the speaker's interest in that subject. Requiring a member of the public to set forth the subject matter of his or her comment in writing in advance of a meeting may create a chilling effect on speech at public meetings. A person may be reluctant to put comments in

[REDACTED]  
Ms. Julia Halsted  
July 19, 2018  
Page 5

writing, especially if the comments may be controversial, although controversial statements are no less protected from government censorship under the First Amendment to the U.S. Constitution.<sup>4</sup>

It is not apparent how use of the advance sign-up form is necessary to promote order and decorum at meetings, or to further any other significant governmental interest, although this office did not ask the Board to explain the rationale behind its rule in this case. Although the Board's practice is to add names of persons who wish to address it to the agenda on the day of the meeting, OMA does not require it to do so. Further, because the Board is not required to answer questions during public comment, no preparation is needed by Board members in order to listen to the public during the meeting. A sign-up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board could accomplish the same goal of running a timely and orderly meeting in a much less restrictive manner, and would prevent the sort of errors that blocked [REDACTED] from addressing the Board during the public comment portion of the August 24, 2017, meeting. Moreover, the Board allows only 21 minutes total during each meeting for public comment. The Board could simply ask if anyone wished to comment at that time. Even if a person decided during the course of a meeting that he or she wanted to address the Board, it is unclear how the meeting would be disrupted if the Board allowed that person to comment if time permitted.

Section 1 of the Board's rules, along with the required form, tend to restrict rather than accommodate the statutory right of members of the public to address the Board. This office suggests that the Board review and amend the County ordinances governing public comment in light of the conclusions expressed here. As explained in this letter, the rules should accommodate a speaker's statutory right to address the Board 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.

Lastly, this office emphasizes that the Public Access Bureau generally reviews a particular rule governing public comment only if there is an allegation that a member of the public 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. Accordingly, it is important to note that a determination by this office concerning one of a public body's rules for public comment cannot be extrapolated to mean that other rules that were not specifically addressed would pass muster.

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<sup>4</sup>U.S. Const., amend. I ("Congress shall make no law \* \* \* abridging the freedom of speech.").

[REDACTED]  
Ms. Julia Halsted

July 19, 2018

Page 6

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This file is closed. If you have any questions, you may contact me by mail at the Chicago address listed on the first page of this letter, by phone at (312) 550-4480, or by e-mail at sbarnaby@atg.state.il.us. Thank you.

Very truly yours,

[REDACTED]  
SHANNON BARNABY  
Assistant Attorney General  
Public Access Bureau

49391 o 206g improper pub comment county

cc: *Via electronic mail*  
The Honorable Frank Haney  
Chairman  
Winnebago County Board  
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Rockford, Illinois 61101  
BoardOffice@WinCoIL.us