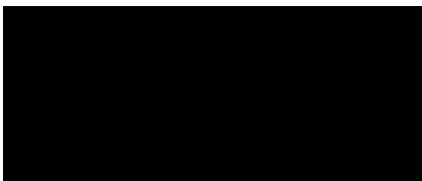




OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

November 2, 2018





Via electronic mail
Mr. Brian Boomer
FOIA Officer
Pecatonica Township
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com

RE: OMA Request for Review – 2018 PAC 51413

Dear  and Mr. Boomer:

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 explained below, the Public Access Bureau concludes that the Pecatonica Township Board (Board) violated the requirements of OMA in connection with its December 19, 2017, meeting by prohibiting a member of the public from addressing the Board during the public comment portion of the meeting pursuant to an unreasonable established and recorded rule.

On January 25, 2018,  submitted this Request for Review alleging that that the Board did not allow him to provide public comment at its meeting on December 19, 2017. This office construed the Request for Review as alleging a violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2016)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." On February 6, 2018, this office sent a copy of the Request for Review to the Board and requested a written response to  allegation, together with copies of Board's rules governing public comment and the December 19, 2017, meeting agenda and minutes. Having

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received no response, this office sent a second letter to the Board on February 23, 2018, seeking the same information. On March 2, 2018, the Board's attorney, Mr. John Nelson, informed this office by telephone that ██████████ was told he could not provide public comment during the Board's December 19, 2017, meeting because he tried to sign up to speak 11 minutes before the meeting began. On April 20, 2018, the Board provided a written response and copies of the meeting agenda and minutes. On April 23, 2018, this office forwarded a copy of the Board's response to ██████████ he did not reply. On April 24, 2018, the Board provided a copy of the ordinance setting forth its public comment rules.¹

DETERMINATION

Under the plain language of section 2.06(g) of OMA, 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, issued September 30, 2014, at 6. 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 to serve significant governmental interests. *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 limitations on 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, issued September 4, 2014, at 4.

A rule that promotes order by requiring members of the public to sign up in advance to address a public body does not violate the First Amendment to the United States Constitution provided that it is reasonable in time and scope. *Timmon v. Jeffries*, No. 1:08-CV-645, 2009 WL 270043, at *3 (W.D. Mich. Jan. 30, 2009) (collection of sign-up forms immediately before public comment portion of meeting was a permissible narrowly tailored restriction); *see also Bach v. School Board of City of Virginia Beach*, 139 F. Supp. 2d 738, 741 (E.D. Va. 2001) (requiring speakers to sign up in advance of meeting is a reasonable content neutral regulation). However, 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, at 6 (rule requiring members of the public to sign up to comment five days in advance of meetings, before the board was required to post its agenda, imposed an unreasonable restriction on public comment); Ill. Att'y Gen. PAC Req. Rev. Ltr. 50470, issued April 18, 2018, at 5 (rejecting a three-day advance sign up requirement and stating: "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

¹Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018).

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same goal of running a timely and orderly meeting, but in a much less restrictive manner."). *Compare with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 39640, issued June 22, 2016, at 3 (rule requiring prospective commenters to sign up by start of meeting did not unreasonably restrict the right to public comment).

In the Board's response to this office, Trustee Brian Boomer stated:

According to the Pecatonica Township's public speaking ordinance, an individual that wishes to address the board has to sign in to do so no later than 15 minutes prior to a meeting. In order to ensure that there is no confusion as to our policy, and to avoid possible complaints, we have been striving to be consistent in its implementation. ██████████ attempted to sign up to speak at the December 19, 2017 meeting after the deadline had passed, an act to which I was personally a witness, and therefore was unable to speak. The policy has been explained to ██████████ and he has successfully signed in to speak at subsequent meetings.^[2]

The Board also sent a copy of its ordinance requiring advance sign up for public comment, which states, in relevant part:

Nonmembers may address the Pecatonica Township Board if a written request is submitted to the Pecatonica Township Board for the meeting the person requesting to speak at, no less than fifteen (15) minutes prior to the start of the regular meeting of the Pecatonica Township Board.^[3]

The Board also clarified that the vote to change the sign up deadline from 30 minutes to 15 minutes in advance of meetings was held on September 19, 2017, but that the ordinance is not dated until March 20, 2018, because "a previous clerk had not filed a copy of the amended public speaking ordinance."⁴ This office's review of the minutes from the September 19, 2017, meeting confirmed that they state: "After a brief discussion, Brian Boomer motioned to amend the time

²Letter from Brian Boomer, FOIA Officer, Pecatonica Township, to Marie Hollister, Assistant Attorney General, Public Access Bureau (April 20, 2018).

³Pecatonica, Ill., Ordinance 2018-102 (March 20, 2018).

⁴E-mail from Brian Boomer, FOIA Officer, Pecatonica Township, to Marie Hollister (April 24, 2018).

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requirement in the ordinance for a non- member to sign in prior to a meeting to 15 mins. * * * Motion Carried."⁵ Thus, the 15 minute advance sign up requirement was an established and recorded Board rule at the time of its December 19, 2017, meeting. Accordingly, the Board did follow its established and recorded rule when it prevented ██████████ from addressing the Board at that meeting.

This office concludes, however, that in the absence of a compelling government interest, terminating sign-up for public comment 15 minutes before the start of Board meetings unreasonably restricts public comment, and consequently such a rule violates OMA. The Board's response to this office did not explain why it considers a 15 minute advance sign up rule necessary to ensure that its meetings are conducted efficiently or to maintain order. Further, it is not clear how denying the opportunity to speak to people who arrive less than 15 minutes before a meeting promotes any other significant government interest. To the contrary, requiring a written request to address public officials and setting an arbitrary early cut-off time for signing up potentially limits or reduces the number of people who are allowed to comment with no concomitant benefit to the public body. The Board's rules limit each member of the public to three minutes of speaking time and allow a maximum of 30 minutes total for public comment.⁶ Further limitation on public comment, including the advance sign-up requirement, seems unnecessary to promote decorum or the smooth running of a meeting. This office requests that the Board review and revise its ordinance regulating public comment accordingly.

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 (312) 793-0865 or the Chicago address listed on the first page of this letter.


Very truly yours,

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MARIE HOLLISTER
Assistant Attorney General
Public Access Bureau

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⁵Pecatonica Township Board, Meeting, September 19, 2017, Minutes 2.

⁶Pecatonica, Ill., Ordinance 2017- "Regulation of Non-Member Address to the Pecatonica Township Board"(Undated).


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cc: *Via electronic mail*
Mr. Joseph Musso, Supervisor
Pecatonica Township Board
328 East 9th Street
Pecatonica, Illinois 61063
pectwnsp@frontier.com