



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

January 17, 2024

Via electronic mail

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Via electronic mail

The Honorable Catherine Metsker
Chair, Executive Committee
McLean County Board
115 East Washington Street
Bloomington, Illinois 61701
catherine.metsker@mcleancountyl.gov

RE: OMA Request for Review – 2023 PAC 78964

Dear [REDACTED] and Ms. Metsker:

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 Executive Committee (Committee) of the McLean County Board (Board) violated the requirements of section 2.06(g) of OMA¹ in connection with its November 13, 2023, meeting.

BACKGROUND

On November 13, 2023, [REDACTED] submitted a Request for Review to the Public Access Bureau alleging that the Committee improperly restricted the public's right to address its members at its November 13, 2023, meeting by requiring members of the public to

¹5 ILCS 120/2.06(g) (West 2022).

500 South 2nd Street
Springfield, Illinois 62701
(217) 782-1090 • Fax: (217) 782-7046

115 South LaSalle Street
Chicago, Illinois 60603
(312) 814-3000 • Fax: (312) 814-3806

1745 Innovation Drive, Suite C
Carbondale, Illinois 62903
(618) 529-6400 • Fax: (618) 529-6416

Individuals with hearing or speech disabilities can reach us by using the 7-1-1 relay service.

www.IllinoisAttorneyGeneral.gov

sign up to speak at least 24 hours in advance of holding the meeting. ██████████ explained that on the County website, an online form is available to register for public comment at a Board or committee meeting and on this form, it states: "Must be Received 24 Hours Prior to Meeting Time."² ██████████ stated she completed the online form the morning of the meeting and indicated that she wished to speak on certain items in the agenda. She asserted: "I received my Submission Receipt which stated that 'If eligible for public comment, you will be contacted with further information about how to participate in the meeting.' I was never contacted regarding this submission, meaning I was being denied for public comment."³

On November 20, 2023, this office forwarded a copy of the Request for Review to the Committee and asked it to provide this office with copies of its November 13, 2023, meeting agenda, minutes, and any rules or policies governing public comment, together with a written response to ██████████ OMA allegations. On December 1, 2023, this office received the requested materials from the McLean County State's Attorney's Office on behalf of the Committee. On December 4, 2023, this office forwarded a copy of the Committee's response to ██████████; she replied that same day.

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." 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, 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, at 6.

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. *Compare* 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) and Ill. Att'y Gen. PAC Req. Rev. Ltr. 54487, issued November 10, 2021, at 2 (rule requiring members of the public to sign up to comment 53 hours in advance of meetings unreasonably restricted the right to public comment where the public body did not demonstrate that imposing its advance sign up requirement was reasonably necessary to maintain order or to conduct an efficient

²E-mail from ██████████ to [Public Access Bureau] (November 13, 2023).

³E-mail from ██████████ to [Public Access Bureau] (November 13, 2023).

meeting, and no such justification was apparent), *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 its response to this office, the Committee acknowledged that it "did enforce a 24-hour registration requirement with regard to ██████████ request," but denied that it failed to provide an opportunity for ██████████ to speak at the November 13, 2023, meeting.⁴ The Committee referred this office to section 20-13G of the McLean County Code,⁵ which provides, in relevant part:

- G. Appearance by non-members. With the acknowledgement that the most appropriate forum for the general public to address County Board members is the committee charged with overseeing the subject matter of the address, those wishing to address the Board shall adhere to the following:
- (1) Subject to provisions of Subsection **G(3)**, *any member may request that a County officer or employee, or other persons, be permitted to appear before the County Board* on matters directly related to a topic on the agenda for a County Board meeting, and such request shall be granted by the Chair unless there is objection by any member, in which event Board action, by general vote as provided in Subsection **A(2)** above, will be required to overrule the Chair. The provisions of Subsection **G(2)** shall not apply to requests made by members pursuant to this Subsection **G(1)**.
 - (2) The *County Board shall permit non-members to appear before and address members* of the County Board during County Board meetings *in accordance with the following rules*:
 - (a) There shall be a total maximum of 15 minutes allotted in accordance with § **20-12E** and 15 minutes allotted in accordance with § **20-12I** during each County Board

⁴Letter from Trevor Sierra, First Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Teresa Lim, Assistant Attorney General, Office of the Attorney General (December 1, 2023).

⁵McLean County Code of Ordinances § 20-13G (amended December 16, 2021).

meeting for appearances by all non-members. Any member may request an extension of this time limit by making a request to allow the non-member to continue pursuant to Subsection **G(1)**. [Amended 12-16-2021]

- (b) All requests by non-members for appearance before the Board shall be made prior to the meeting at which the non-member wishes to appear within the time periods set forth in Subsection **G(2)(c)**. Such requests shall be submitted to the County Administrator, in writing or by e-mail identifying the subject matter or agenda item to be addressed.
- (c) ***Requests to appear that are directly related to an item on an agenda for a County Board meeting shall be submitted not less than 24 hours prior to the published start time of the Board meeting at which the non-member wishes to appear.*** Requests to appear that are not directly related to an item on an agenda for the County Board meeting shall be submitted not less than two business days prior to the published start time of the Board meeting at which the non-member wishes to appear. [Amended 4-21-2020] (Emphasis added.)

The Committee argued that it did not unreasonably restrict ██████████ right to address members of the Committee "because ██████████ failed to avail herself of the opportunity to address the Committee as provided for under § 20-13G(1) of the Code."⁶ In particular, the Committee asserted that the Board and its committees "routinely grant nonmembers an opportunity to provide public comment" pursuant to that provision, and that ██████████ did not attempt to pursue that option. The Committee contended that if ██████████ had attended and requested to speak at the meeting, "there is every reason to believe she would have been granted permission."⁷

In reply to that answer, ██████████ argued that "[i]t is unreasonable to expect a member of the public to know of any other pathways to participate, given the information

⁶Letter from Trevor Sierra, First Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Teresa Lim, Assistant Attorney General, Office of the Attorney General (December 1, 2023).

⁷Letter from Trevor Sierra, First Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Teresa Lim, Assistant Attorney General, Office of the Attorney General (December 1, 2023).

provided."⁸ She asserted that on the County website, a link titled "How do I request to speak a County Board or Committee meeting?" directs the public to the online registration form. She further asserted that the form only advises that requests to speak must be submitted 24 hours in advance, and she did not receive any communications after submitting her request notifying her of any alternative options. ██████████ also highlighted that some other public bodies permit members of the public to submit a request as late as five minutes before a meeting whereas she submitted her request more than 7 hours prior to the meeting, but was denied based on the 24-hour registration rule.

In this matter, it is undisputed that the Committee enforced a 24-hour registration requirement on ██████████ completed online form to speak at the November 13, 2023, meeting, which was submitted the morning of the meeting. The Committee did not explain how this rule was necessary to maintain order and decorum and to conduct an efficient meeting, and no such justification is apparent. Although it may be convenient for the Committee to have advance notice of who intends to participate in public comment, the enforcement of the rule unreasonably restricted ██████████ statutory right to address the Committee.

The Committee's claim that ██████████ did not exhaust her options for requesting to speak requires a strained interpretation of the Board's rules governing public comment. As the Committee highlighted, section 20-13G(1) of the McLean County Code (Code) provides that "any member may request that a County officer or employee, or other persons, be permitted to appear before the County Board[.]" Thus, section 20-13G(1) governs requests made by Board members concerning the appearance of non-members. Under this provision, a Board member may select a county employee or other individual to appear before the Board and speak on an issue directly related to an agenda item, so long as there are no objections and votes to overrule the Chair's granting of the appearance. Given its express applicability to requests made by members, it is not obvious that the general public can solicit members, either before or at a meeting, to make requests on its behalf.

In contrast, section 20-13G(2) of the Code specifically provides that the Board "shall permit non-members to appear before and address members of the County Board during County Board meetings in accordance with the following rules" and enumerates them. Among those rules, the Code states that "[r]equests to appear that are directly related to an item on an agenda for a County Board meeting shall be submitted not less than 24 hours prior to the published start time of the Board meeting at which the non-member wishes to appear." Reading the two provisions together, a member of the public could have reasonably understood section 20-13G(2) of the Code, rather than both provisions, to apply to requests made by the general public to speak at a meeting because that provision directly concerns requests made by non-members. Even if the Committee routinely allows non-members to speak pursuant to section 20-

⁸E-mail from ██████████ to Teresa Lim (December 4, 2023).

13G(1) of the Code, the Committee did not illustrate that members of the public reasonably knew that they could present themselves at a meeting and request again to speak after having already been denied via the online registration form. Additionally, [REDACTED] asserted that neither the County website nor the submission receipt provided information regarding other possible ways to request to speak if an online submission was denied.

Finally, section 2.06(g) of OMA more broadly guarantees members of the public the opportunity to address public bodies, without arbitrary restrictions. If the ability to address a public body was contingent on a member of the public body making such a request on behalf of the speaker, and could be thwarted by the public body voting against the speaker's appearance, the right to public comment under section 2.06(g) of OMA would be no right at all. Under these circumstances, the Public Access Bureau concludes that the Committee improperly restricted [REDACTED] right to address the Committee at its August 13, 2023, meeting in violation of section 2.06(g) of OMA when it enforced a 24-hour registration rule to deny the request she submitted online to speak at the meeting.


This office requests that the Board and its committees review and consider revising its current ordinance regulating public comment to ensure that any advanced sign up requirement is reasonably necessary to maintain order and to conduct an efficient meeting. To the extent that members of the public may attend a meeting and request in person to speak, the Board may wish to update the public comment information on the County website, including the online submission form.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. This letter shall serve to close this matter. If you have any questions, please contact me at the Chicago address listed on the first page of this letter.

Very truly yours,

[REDACTED]
TERESA LIM
Supervising Attorney
Public Access Bureau

78964 o 206g pub comment improper co


The Honorable Catherine Metsker
January 17, 2024
Page 7

cc: *Via electronic mail*
Mr. Trevor J. Sierra
First Assistant State's Attorney
McLean County State's Attorney's Office
115 East Washington Street, Room 401
Bloomington, Illinois 61701
Trevor.Sierra@mcleancountyil.gov