

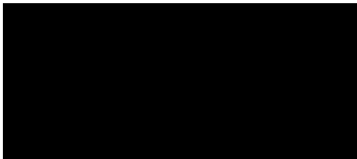


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 11, 2016

Via electronic mail



Via electronic mail

Mr. Robert J. Sprague
Sprague and Urban
26 East Washington Street
Belleville, Illinois 62220
rsprague@spragueurban.com

Re: OMA Request for Review – 2015 PAC 37391

Dear [REDACTED] and Mr. Sprague:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2014), as amended by Public Act 99-402, effective August 19, 2015). For the reasons discussed below, this office concludes that the Board of Trustees of the Village of Cahokia (Board) violated OMA by prohibiting a member of the public from addressing the Board during its August 25, 2015, meeting.

On September 9, 2015, [REDACTED] submitted a Request for Review to this office alleging that at the August 25, 2015, Board meeting:

a citizen who was unable to submit a question, tried to make a comment at our public board meeting. She was not loud, or rude. She politely asked if she could make a comment, and told him [the Mayor] he did not have to answer. She was told she could not speak, and then [the Mayor] turned around and ordered the Police Chief to have her removed from the building. On July 14th our mayor created a new ordinance stating questions must be

██████████
Mr. Robert J. Sprague
January 11, 2016
Page 2

submitted 7 hours in advance. The form that must be filled out says nothing about comments, and even if it did, would that make it legal for him not to allow citizens to make a comment at a public board meeting?^[1]

On September 21, 2015, the Public Access Bureau sent a copy of the Request for Review letter to the Mayor and asked for a written response to the allegations therein. 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 25, 2015, meeting for our review. In a letter dated October 2, 2015, counsel for the Village, Mr. Robert J. Sprague, responded that ██████████ "is not the woman who was removed from the meeting. The lady that was removed from the meeting was escorted out of the meeting for being disruptive and she would not stop talking after the question and answer session was over in order for the meeting to continue peacefully. This lady was asked to leave."² On October 14, 2015, Mr. Sprague's office provided the Public Access Bureau with copies of the agenda and minutes of the Board's August 25, 2015, meeting, copies of the rules for addressing the Board during its meetings, and the form that the Board requires members of the public to fill out in advance of meetings in order to speak.

The agenda for the Board's August 25, 2015, regular meeting lists:

OFFICIAL RULES FOR COMMENTS: Forms for questions can be obtained from the Clerk's Office and in order to speak must be made by 12 noon on the day of the meeting. Speaking will be limited to two (2) minutes. The Mayor, at his discretion, may extend the time, shorten the time or limit the number of speakers.^[3]

The heading "Public Comments & Questions" appears next on the agenda.⁴ The meeting minutes reflect that this item of business was conducted in a question and answer format, during which members of the public asked the questions which had been previously submitted on the forms, and the mayor responded.

¹Letter from ██████████ to Lisa Madigan, Office of the Attorney General, State of Illinois (September 9, 2015).

²Letter from Robert J. Sprague, Sprague and Urban, to Edie Steinberg, Office of the Attorney General (October 2, 2015).

³Village of Cahokia Board of Trustees Regular Meeting, Agenda (August 25, 2015).

⁴Village of Cahokia Board of Trustees Regular Meeting, Agenda (August 25, 2015).

██████████
Mr. Robert J. Sprague
January 11, 2016
Page 3

The Board's public comment rules provide that:

- a) Persons desiring to address the Village Board of the Village of Cahokia shall fill out a form entitled "Request For Citizen Comments." The "Request For Citizen Comments" form may be obtained from the Office of the Village Clerk. The "Request For Citizen Comments" form shall be delivered to the Office of the Village Clerk before 12 noon on the day of the meeting in order to be allowed to speak at that meeting.
- b) No persons addressing the Village Board, may be allowed to speak more than two minutes unless the Mayor allows an extension of time. The Mayor, as presiding officer may in his discretion shorten the time. The Mayor, in his discretion may limit the number of people allowed to speak.^[5]

The Village of Cahokia's "Request For Citizen Comments" form directs the person who wishes to comment to print or type the following information: "Date of Request"; "Name of Person Addressing the Council"; "Organization (if applicable)"; "Address"; "Telephone"; "Subject (Please list the questions you are going to ask)"; and "Date of Appearance."⁶

On October 16, 2015, this office forwarded a copy of the Board's response to ██████████
██████████ On October 25, 2015, ██████████ replied via e-mail, stating that the woman who was removed from the meeting had not been rude or disorderly. ██████████ also alleged that the Board's rules improperly require members of the public who wish to address the Board to submit their questions before noon on the date of a Board meeting, whereas the Board does not disseminate copies of the resolutions or ordinances that will be discussed during its meetings until later in the afternoon on meeting dates.

This office has reviewed a video recording of the public comment portion of the Board's August 25, 2015, Board meeting.⁷ The video shows the Mayor stating the name of each person who submitted a question in advance of the meeting, prompting them to ask their

⁵Official Rules Of Procedure For Addressing Village Board Of The Village of Cahokia (undated).

⁶REQUEST FOR CITIZEN COMMENTS, Village of Cahokia.

⁷Cahokia Village Board, Meeting, August 25, 2015, available at <https://www.youtube.com/watch?v=w6KXnTOAFCg> (last visited November 18, 2015) at 7:48 to 8:32.

██████████
Mr. Robert J. Sprague
January 11, 2016
Page 4

questions. After each question, the Mayor provided an answer but did not allow any follow-up questions or comments, stating that questions had to have been submitted by noon that day. As the Mayor finished with the pre-submitted questions, a woman said "excuse me, I would like to make a comment." The Mayor replied that if she would like to make a comment she would have to submit a question by noon on the date of a meeting. After some additional dialogue during which the woman repeated her request to comment and others attending the meeting asserted that the woman had a right to address the Board, the Mayor signaled with his hand in an apparent gesture to have the woman removed from the meeting. Although not shown on the video, both parties agree that the woman was escorted out of the meeting. At no time did the woman raise her voice or use profanity; the entire exchange took less than a minute.

DETERMINATION

Standing

As a preliminary matter, this office notes that the Board's response to this office stated that ██████████ was not the person who was removed from the meeting. If the Board's response is intended to suggest that ██████████ does not have standing to file this Request for Review, it is incorrect. Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2014), as amended by Public Act 99-402, effective August 19, 2015) broadly provides that "[a] person who believes that a violation of this Act by a public body has occurred may file a request for review with the Public Access Counselor established in the Office of the Attorney General not later than 60 days after the alleged violation." OMA does not limit standing to a person whose rights were most directly affected by the alleged violation. To the contrary, OMA expressly provides that any person who believes a public body has violated OMA may file a Request for Review.

Rules for Public Comment

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." Indeed, the Attorney General has previously concluded that section 2.06(g) of OMA "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; *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.

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.

A rule that promotes order and decorum 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, issued September 30, 2014, 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).

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 simply sign-up to speak immediately before or during the meeting, or by sending the Clerk an e-mail or letter, or telephoning the Clerk's office on the day of the meeting, the Board's rules require a person who wishes to "comment" to obtain and fill out a particular form, available at the Clerk's Office, and submit it to the Clerk before noon on the day of a meeting. The Board did not provide any information indicating that the use of its form is necessary to promote order and decorum at meetings, or to further any other significant governmental interest. A sign-up sheet set out just prior to the meeting asking for the names of individuals who wish to address the Board, or simply requiring prospective speakers to notify the Clerk's Office shortly before the meeting could accomplish the same goal of running a timely and orderly meeting in a much less restrictive manner.

Moreover, the Board's advance sign-up form requires citizens to submit, in addition to their names, their addresses, and phone numbers, as well as the subject or list of questions they intend to ask. Requiring a member of the public to set forth his or her question or 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 writing, especially if the comments

Mr. Robert J. Sprague

January 11, 2016

Page 6

may be controversial, although controversial statements are no less protected from government censorship under the First Amendment to the U.S. Constitution.⁸ In addition, the requirement could be enforced to restrict the content of speech by precluding comments a person may wish to make after reviewing the resolutions or other information disseminated by the Board later in the day or during the meeting.

A person also may be reluctant to put comments in writing or participate in public comment when he or she must submit an address and telephone number to the public body in order to do so. It is impermissible for a public body to require an individual to state his or her address during a meeting in order to provide a comment. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 7. Similarly, it is unclear how requiring a speaker to submit his or her address or telephone number on a form before addressing the Board advances any significant governmental interest. Section (a) of the Board's rules, along with the required form, tends to restrict rather than accommodate the statutory right of members of the public to address the Board. Because section (a) of the Board's rules, including the required sign-up form, unnecessarily restricts individuals from addressing the Board, it is not a reasonable rule within the meaning of section 2.06(g) of OMA.

In this instance, the Board refused to allow a member of the public to speak during the designated public comment period because she had not filled out and submitted a specific form in advance of the meeting in accordance with section (a) of the Board's rules. It is also undisputed that the police escorted the woman out of the meeting at the direction of the Mayor for requesting to comment. The Board has not provided any facts supporting its contention that the woman was disruptive. The video recording of the meeting reveals that she was neither loud nor disrespectful, nor was she attempting to comment outside of the designated public comment period. Because the Board enforced an unreasonable rule to infringe on the woman's statutory right to address the Board during its August 25, 2015, meeting, we conclude that the Board violated section 2.06(g) of OMA.

Addressing the Board

Moreover, it appears that the Board has misinterpreted OMA's public comment requirement as providing for a controlled question and answer session, as opposed to a forum where each person may speak his or her mind. The Attorney General has concluded that section 2.06(g) of OMA "requires that all public bodies subject to the Act provide an opportunity for members of the public *to address public officials at open meetings*." (Emphasis added.) Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, at 5; *see also* Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, at

⁸U.S. Const., amend. I ("Congress shall make no law * * * abridging the freedom of speech.").

Mr. Robert J. Sprague

January 11, 2016

Page 7

4. Section 2.06(g) does not mandate that public bodies conduct a question and answer session; rather, a public body must allow an opportunity during open meetings for "any person * * * to address" the public officials present. "Address" used as a verb is defined as "to speak or write directly to."⁹ Thus, the plain language of section 2.06(g) of OMA contemplates the opportunity for citizens to express their views to members of a public body by making comments or asking questions. OMA does not require any response by or answers from public officials. Although OMA does not prohibit the Board from allowing citizens to submit questions in advance of the meeting and then providing answers at the meeting, that practice is not "public comment" and does not satisfy the requirement of section 2.06(g). Accordingly, this office directs the Board to allow the public to address the Board, rather than limiting members of the public to asking questions.

We note, however, that the right to public comment is not absolute, and may be properly curtailed if a speaker acts in an insulting or unruly manner that disrupts the order and decorum of a meeting. Although the statutory right to public comment includes the right to express criticism, a public body is not required to tolerate insulting or disorderly conduct that interferes with its ability to conduct a business meeting.

In this instance the Board's rules for public comment may have been promulgated to allow time for public officials, particularly the mayor, to determine how to answer questions that would be asked at public meetings. As noted above, however, OMA does not require the Board or the Mayor to respond to questions during an open meeting. Accordingly, signing up on a particular form seven hours before the meeting, listing personal information, and describing the content of questions or comments should not be prerequisites to addressing the Board. We request that the Board amend its rules governing public comment to ensure that any restrictions on the public's statutory right to address the Board are narrowly tailored to further a significant governmental interest.

⁹Merriam-Webster Dictionary, <http://www.merriam-webster.com/dictionary/address> (last visited December 4, 2015).

[REDACTED]
Mr. Robert J. Sprague
January 11, 2016
Page 8

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, please contact me at (312) 814-5201.

Very truly yours,

[REDACTED]
EDIE STEINBERG
Assistant Attorney General
Public Access Bureau

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cc: The Honorable Curtis McCall, Jr.
Mayor, Village of Cahokia
103 Main Street
Cahokia, Illinois 62206