



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 30, 2014

PUBLIC ACCESS OPINION 14-012
(Request for Review 2014 PAC 30194)

OPEN MEETINGS ACT:
Rules for Public Comment

Mr. Bob Grogan, CPA, CFE
DuPage County Auditor
418 Bunning Drive
Downers Grove, Illinois 60516

Mr. Mark D. Messman
Assistant State's Attorney
McLean County State's Attorney's Office
Government Center
115 East Washington Street, Room 401
P.O. Box 2400
Bloomington, Illinois 61702-2400

RE: OMA Request for Review – 2014 PAC 30194

Dear Mr. Grogan and Mr. Messman:

This is a binding opinion issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons discussed below, this office concludes that the McLean County Board (Board) violated OMA by prohibiting Mr. Bob Grogan from addressing the Board at its June 17, 2014, meeting because he did not submit a written request to appear before the Board at least five working days prior to the meeting.

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BACKGROUND

On July 1, 2014, Mr. Grogan submitted a Request for Review alleging that the Board's advance sign-up requirement, which contemplates that persons wishing to address the Board must request permission to do so in writing five working days before the meeting, violates OMA. Specifically, Mr. Grogan stated, "I wanted to speak at public comment to the McLean County Board regarding the issue of a proposed referendum at their June 17th meeting and was denied the opportunity because of their board rule which calls for 5 days written advance notice."¹ In support of his allegation, Mr. Grogan submitted a copy of his June 11, 2014, e-mail to Mr. William Wasson, McLean County Administrator, requesting to speak during public comment at the June 17, 2014, meeting, as well as a copy of Mr. Wasson's June 11, 2014, e-mail response denying his request. Mr. Wasson responded:

Unfortunately, your request for appearance by a non-member(s) before the Board was not made in compliance with County Board Rule] 5.14-7(B)[.] * * * Therefore, your request to appear under Appearance by Members of the Public and County Employees on the County Board Agenda cannot be recognized for the June 17, 2014 County Board Meeting commencing at 9:00 AM.

I have also advised the County Board Chairman of your request and that under the provisions of [County Board Rule]5.14-7(B), your request has been declined.^[2]

Mr. Grogan's Request for Review also stated that "[d]espite the email * * * telling me that I was ineligible, I went to their board meeting on June 17th and requested verbally the right to speak that day and was denied again by Mr. Wasson."³

On July 8, 2014, the Public Access Bureau sent a copy of Mr. Grogan's Request for Review to Mr. Wasson and asked for a written response to the allegations, a copy of the Board's rules governing public comment, and the agenda, minutes, and any video or audio

¹E-mail from Bob Grogan, DuPage County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 1, 2014).

²E-mail from William R. (Bill) Wasson, County Administrator, McLean County Administrator's Office, to Bob [Grogan] (June 11, 2014).

³E-mail from Bob Grogan, DuPage County Auditor, to Sarah Pratt, Public Access Counselor, Office of the Attorney General (July 1, 2014).

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recordings of the June 17, 2014, Board meeting.⁴ Counsel for the Board, Mr. Mark D. Messman, responded to this office in a letter dated July 17, 2014,⁵ and furnished copies of the agenda and minutes from the meeting and a copy of the Board's rules governing public comment. Mr. Messman acknowledged that the Board does "not deny that Mr. Grogan was not permitted to appear before the McLean County Board at its meeting on July 17, 2014."⁶ He asserted, however, that the Board did not violate OMA because Mr. Grogan's request was properly denied under the Board's established rules for public comment:

The County Board allows non-members to appear and speak at County Board and Committee [meetings] pursuant to its rules. County Board Rule 14-7 applies to requests to make an appearance at County Board meetings. This rule provides two mechanisms through which members of the public may speak at a County Board meeting. Subsection (B) provides that any person wishing to speak may submit a request to the County Administrator not less than five days prior to the meeting. Alternatively, under subsection (A) a County Board member may request that person[sic] be allowed to speak at a meeting without any requirement for advance notice. As is evident from the emails provided to you, Mr. Grogan attempted to follow Section 14-7(B) and submitted a request to the County Administrator. Unfortunately, his request was not timely made and therefore the County Administrator lacked authority to grant that request."⁷

⁴Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to William Wasson, County Administrator, McLean County Administrator's Office (July 8, 2014).

⁵Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014).

⁶Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 1.

⁷Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 1-2.

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Mr. Messman noted that another individual from the Illinois County Auditor's Association, of which he believed Mr. Grogan to be a member, submitted a timely request and was granted five minutes to speak at the meeting.⁸ Mr. Messman also emphasized that "[t]he statute provides no guidance and contains no requirements for * * * what the rules must provide. For example, there is no requirement that the public be allowed to speak to matters on the agenda. Nor, is there any prohibition against imposing a deadline for requesting permission to appear."⁹

On July 22, 2014, this office forwarded the Board's response to Mr. Grogan.¹⁰ He did not reply. On August 28, 2014, the Public Access Counselor properly extended the time to issue a binding opinion by 21 business days pursuant to section 3.5(e) of OMA.¹¹

ANALYSIS

Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body."

The Board's rules governing public comment provide:

5.14-7 Appearance by Non-Members

(A) Any member may request that a County Officer or employee, or other persons, be permitted to appear before the Board on matters of County business, and such request shall be granted by the Chairman unless there is objection by any member, in which event Board action will be required to overrule the Chairman.

⁸Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 2.

⁹Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 2-3.

¹⁰Letter from Matthew Hartman, Assistant Attorney General, Public Access Bureau, to Bob Grogan (July 22, 2014).

¹¹Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, to Bob Grogan and Mark D. Messman, Assistant State's Attorney, McLean County State's Attorney (August 28, 2014).

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(B) All requests by non-members of the Board for appearance before the Board shall be made to the Administrator, in writing with the subject matter stated, not less than five working days before the next scheduled Board meeting. Such appearance with regard to any particular topic shall be limited to a time not to exceed three minutes for each individual, five minutes for a representative spokesman of a group and fifteen minutes total. The Chairman may act to prevent repetition or digression, to maintain decorum and to exclude discussion of matters which have had a previous public hearing conducted according to law, discussion of matters where public comment would interfere with the due process of law or discussion of matters which would be in direct conflict with restrictions placed upon the Board by other applicable law.^[12]

Prior to January 1, 2011, OMA did not guarantee members of the public the right to address public bodies. Instead, any right to do so was derived from statutes governing specific governmental entities or policies adopted by them. Section 2.06(g) of OMA, which was added by Public Act 96-1473, effective January 1, 2011, requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings.

The right to address public bodies at open meetings is not without limits, however. To the contrary, section 2.06(g) expressly provides that public comment is subject to the "rules established and recorded by the public body." Although OMA does not specifically address the types of rules that a public body may adopt, public bodies may generally promulgate reasonable "time, place and manner" regulations that are necessary to further a significant governmental interest. *See, e.g., I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009) (examining whether the application of city council's rules for public comment violated plaintiffs' rights). "City councils have legitimate reasons for having rules to maintain decorum at public meetings []" and "to ensure that the meetings can be efficiently conducted." *Timmon v. Wood*, 633 F. Supp. 2d 453, 465 (W.D. Mich. 2008). For example, a public body may legitimately prescribe reasonable time limits for public comment. *See Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that because a time limit for speakers at a

¹² See Rules of the County Board of McLean County, Illinois, ch. 5, § 5.14-7 (adopted December 6, 2010); *see also* Proceedings of the County Board of McLean County, Illinois, December 3, 2012, Resolution of the McLean County Board to Continue the Rules of the County Board of McLean County (approved December 3, 2012) at 25.

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public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, the time limit did not violate the speaker's rights under the first amendment to the United States Constitution).

The parties agree that the Board followed its established rules when it denied Mr. Grogan's request to address the Board, but Mr. Grogan asserts that those rules violate OMA. The Board states that OMA does not provide guidance or requirements concerning written rules for public comment, and further asserts that OMA does not contain "any prohibition against imposing a deadline for requesting permission to appear."¹³ However, as stated above, the 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. *See Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25. By requiring that a member of the public either obtain the recommendation of a Board member or submit a written request to address the Board not less than five working days before the meeting, Rule 5.14-7 does not take into account the fact that the public has a statutory *right* to address the Board, subject only to reasonable limitations necessary to further a significant governmental interest.

The first sentence of Rule 5.14-7(B), pursuant to which Mr. Grogan's request to address the Board was denied, contains four requirements. A request must be made: (1) to the County Administrator; (2) in writing; (3) with the subject matter stated; (4) not less than five working days before the next scheduled Board meeting. These requirements impose substantial obstacles for those who wish to speak at the Board's meetings. Requiring written notice "five working days" before a meeting means that a person must submit his or her request to address the Board a full week before a scheduled meeting. However, section 2.02(a) of OMA (5 ILCS 120/2.02(a) (West 2012)) does not require the Board to post an agenda more than 48 hours in advance of the meeting. Accordingly, under the Board's rules, a person must request permission to speak and provide the topic of his or her comments *before* the Board is required to post its meeting agenda. Consequently, by the time members of the public have an opportunity to review the agenda to determine whether they wish to comment, they may be time-barred from submitting a request to address the Board. The Board has not provided any explanation of why five working days' advance notice is reasonably necessary to protect a significant governmental interest. Rather than accommodating public comment, this rule appears to unreasonably restrict members of the public from exercising their statutory right to address the Board.

In responding to this office, Mr. Messman also argued that when the Board denied Mr. Grogan's request to speak as untimely under subsection (B) of Rule 5.14-7, Mr. Grogan

¹³Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 2-3.

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could still have attempted to address the Board by asking for a Board member to request permission on his behalf as provided for in Board Rule 5.14-7(A).¹⁴ Mr. Messman emphasized that "under subsection (A) a County Board member may request that a person be allowed to speak at a meeting without any requirement for advance notice."¹⁵ Because the Board did not rely on Rule 5.14-7(A) in declining his request to speak, we do not have any information demonstrating how that portion of the rule works in practice and, as a result, how easy or difficult it is for a member of the public to rely on that portion of the rule when seeking to comment at a Board meeting.¹⁶ Thus, we forego findings relating to Rule 5.14-7(A).

In this instance, Mr. Grogan submitted his request to address the Board to the County Administrator on June 11, 2014 – four working days before the June 17, 2014, meeting. The Board has not asserted that it was unable to accommodate his request, that doing so would have made it more difficult for the Board to maintain meeting order or decorum, or that denying the request was reasonably necessary to further another significant public interest. Nevertheless, the Board declined to permit Mr. Grogan to address the Board because he failed to submit a written request at least five working days before the meeting as required by Board Rule 5.14-7(B). This rule unnecessarily restricts individuals from addressing the Board and, therefore, is not a reasonable rule within the meaning of section 2.06(g) of OMA. Accordingly, this office concludes that the first sentence of Board Rule 5.14-7(B) violates section 2.06(g) of OMA.

FINDINGS AND CONCLUSIONS

After full examination and giving due consideration to the arguments presented, the Public Access Counselor's review, and the applicable law, the Attorney General finds that:

¹⁴Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 2.

¹⁵Letter from Mark D. Messman, Assistant State's Attorney, Civil Division, McLean County State's Attorney, to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Illinois Attorney General (July 17, 2014), at 2.

¹⁶It is important to note, however, that when he denied Mr. Grogan's request, the County Administrator did not direct Mr. Grogan to subsection A of the rule or indicate that Mr. Grogan could still obtain permission to speak at the meeting by making his request to a Board member. See E-mail from William R. (Bill) Wasson, County Administrator, McLean County Administrator's Office, to Bob [Grogan] (June 11, 2014). Additionally, Mr. Grogan attended the meeting and again asked for permission to provide public comment, but the County Administrator denied this request. It does not appear that when Mr. Grogan attended the meeting, he was informed that he could ask a Board member to request that he be allowed to speak.

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- 1) On June 11, 2014, Mr. Bob Grogan sent a written request via e-mail to Mr. William Wasson, McLean County Administrator, asking to speak during the public comment portion of the June 17, 2014, McLean County Board regular meeting.
- 2) On June 11, 2014, Mr. Wasson advised Mr. Grogan via e-mail that he would not be permitted to speak at the June 17, 2014, Board meeting because his request to address the Board did not comply with the Board's rule requiring that such requests be submitted not less than five working days before a Board meeting.
- 3) On June 17, 2014, Mr. Grogan attended the open meeting of the Board. Mr. Grogan's verbal request to speak during the public comment period was also denied by Mr. Wasson.
- 4) On July 1, 2014, Mr. Grogan submitted a Request for Review to the Public Access Counselor alleging that the Board's rule requiring that requests to address the Board be made in writing at least five working days prior to a meeting violates the requirements of OMA. Mr. Grogan's Request for Review was timely filed and otherwise complies with the requirements of section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2012)).
- 5) The Attorney General properly extended the time to issue a binding opinion by 21 business days, to September 30, 2014, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to Mr. Grogan's Request for Review.
- 6) 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."
- 7) Board Rule 5.14-7(B) provides, in part, that "[a]ll requests by non-members of the Board for appearance before the Board shall be made to the Administrator, in writing with the subject matter stated, not less than five working days before the next scheduled Board meeting." The Board cited this portion of its rules when it denied Mr. Grogan's request to address the Board.
- 8) The Attorney General concludes that the first sentence of Board Rule 5.14-7(B), quoted above, violates section 2.06(g) of OMA because the Board has not demonstrated that requiring a person to request to speak at a public meeting five working days in advance of the meeting is reasonably calculated to further a significant governmental interest, such as promoting meeting order or decorum. To the contrary, requiring a person to submit a written

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request to speak at a public meeting multiple days before a public body is obligated to post the agenda for the meeting is not a reasonable requirement.

Therefore, it is the opinion of the Attorney General that the McLean County Board violated the Open Meetings Act when, pursuant to County Board Rule 5.14-7(B), it denied Mr. Grogan's requests to address the Board at its June 17, 2014, meeting. In accordance with these findings of fact and conclusions of law, the Board is directed to amend its rules governing public comment to comply with OMA and to conduct its future meetings in full compliance with OMA. The Board shall take necessary action as soon as practical to comply with this directive.

This opinion shall be considered a final decision of an administrative agency for the purposes of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et. seq.* (West 2012). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook or Sangamon County within 35 days of the date of this decision naming the Attorney General of Illinois and Mr. Bob Grogan as defendants. *See* 5 ILCS 120/7.5 (West 2012).

Very truly yours,

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