



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ILLINOIS

**Lisa Madigan**  
ATTORNEY GENERAL

December 3, 2018

*Via electronic mail*  
Mr. John Kraft  
7060 Illinois Highway 1  
Paris, Illinois 61944  
john@illinoisleaks.com

RE: OMA Request for Review – 2018 PAC 55513

Dear Mr. Kraft:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2016)). For the reasons set forth below, the information you have furnished provides no basis for the Public Access Counselor to conclude that the Board of Trustees of DuPage Township (Board) violated OMA in connection with the public comment portion of its October 23, 2018, meeting.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2016)) provides, in relevant part:

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. \* \* \* The request for review \* \* \* must include a summary of the *facts supporting the allegation*. (Emphasis added.)

Your October 29, 2018, Request for Review alleged that the Board violated OMA during its October 23, 2018, meeting by applying public comment rules adopted earlier that meeting to your remarks during the public comment portion of the meeting. 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." You argued that the phrase "established and recorded" in section 2.06(g) signifies that a public body may not apply public comment rules during the same meeting in which they are adopted. You further argued that even if the new public comment rules took effect immediately,



Mr. John Kraft  
December 3, 2018  
Page 2

the Township Supervisor, Mr. William M. Mayer, "selectively enforced" them.<sup>1</sup> Additionally, you argued that some aspects of the Board's new public comment rules impermissibly restrict the public's right to address its members. You provided a link to a video recording of the meeting.<sup>2</sup>

As to your argument about when public comment rules take effect, section 80-10 of the Township Code (60 ILCS 1/80-10 (West 2016)) authorizes a township board to "adopt rules not inconsistent with this Code to govern its meetings." No provision of the Township Code appears to prohibit the application of public comment rules after they have been adopted during a meeting. The Board's public comment ordinance stated that it "shall be effective upon its passage."<sup>3</sup> Therefore, the Board's new public comment rules took effect before the public comment portion of the Board's October 23, 2018, meeting.

Moreover, even a public body that has not adopted rules governing public comment has the inherent authority to put a stop to meeting disruptions. *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 924 (N.D. Ill. 2009) (noting that a chairman of a meeting may put an end to disruptive speech). The video recording shows that you disrupted the meeting by refusing to stop speaking long after your time had expired, raising your voice over Supervisor Mayer's and requiring physical intervention to leave the meeting room.

Turning to your argument that the Board selectively enforced its public comment rules, a public body that has adopted rules governing public comment violates section 2.06(g) of OMA when it either: (1) prohibits a member of the public from addressing its members in a manner inconsistent with its established and recorded rules; or (2) prohibits a member of the public from providing public comment pursuant to its established and recorded rules that unreasonably restrict that person's right to address public officials. Ill. Att'y Gen. Pub. Acc. Op. No. 14-009, issued September 4, 2014, at 5-7. Because "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[.]"<sup>4</sup> allowing a commenter some extra time to address the members of the public body generally does not run afoul of section 2.06(g) of OMA, in contrast with cutting off a commenter who was not being disruptive or otherwise violating the public body's public comment rules before expiration of the time period prescribed by those rules. The video recording of the meeting reflects that Supervisor Mayer allowed another commenter who

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<sup>1</sup>E-mail from John Kraft to AG PAC (October 29, 2018).

<sup>2</sup>Edgar County Watchdogs, *DuPage Township Meeting - 10-23-2018*, YouTube (Oct. 28, 2018), <https://youtu.be/e6FGk-89zxl>.

<sup>3</sup>DuPage Township, Ill., Ordinance No. 18-07 (October 23, 2018), available at <http://www.dupagetownship.com/wp-content/uploads/2018/10/18-07-Public-Participation-at-Meetings.pdf>.

<sup>4</sup>Ill. Att'y Gen. Pub. Acc. Op. No. 14-012, issued September 30, 2014, at 6.

Mr. John Kraft  
December 3, 2018  
Page 3

was mid-sentence to finish his thought after the three minute alarm rang.<sup>5</sup> The fact that Supervisor Mayer allowed this member of the public more than three minutes to address the Board does not support the allegation that the Board violated anyone's right to address its members under these circumstances.<sup>6</sup>

Similarly, your claims that individuals ate food during the meeting, spoke without having been recognized, and drummed on the table do not support the allegation that the Board violated anyone's right to address its members. Because the facts you have alleged, together with the video recording of the meeting, do not indicate that the Board improperly restricted any member of the public from addressing its members during its October 23, 2018, meeting, this office has determined that this Request for Review is unfounded.

The Office of the Public Access Counselor, however, is also charged with providing advice and education to both the public and public officials. 15 ILCS 205/7(a), (b), (c) (West 2016). In that capacity, this office notes that because section 2.06(g) of OMA expressly refers to "address[ing] public *officials*" (emphasis added), a member of the public may address remarks to the entire Board or individual trustees. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2018, at 5-6. Additionally, the right to comment during an open meeting includes the right to ask questions of public officials, notwithstanding that OMA does not require public officials to respond to questions or comments. *See, e.g.*, Ill. Att'y Gen. PAC Req. Rev. Ltr. 35858, issued October 20, 2015, at 2.

This letter serves to close this matter. If you have any questions, please contact me at (312) 814-8413, [jjones@atg.state.il.us](mailto:jjones@atg.state.il.us), or the Chicago address on the first page of this letter.

Very truly yours,



JOSHUA M. JONES  
Deputy Bureau Chief  
Public Access Bureau

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<sup>5</sup>Edgar County Watchdogs, *DuPage Township Meeting - 10-23-2018*, YouTube (Oct. 28, 2018), <https://youtu.be/e6FGk-89zxl>, at 55:15.

<sup>6</sup>This office notes that the rule in question allows the presiding officer discretion to extend the three minute time period. DuPage Township, Ill., Ordinance No. 18-07 (October 23, 2018), *available at* <http://www.dupagetownship.com/wp-content/uploads/2018/10/18-07-Public-Participation-at-Meetings.pdf>.

Mr. John Kraft  
December 3, 2018  
Page 4

cc: *Via electronic mail*  
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