



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

March 20, 2023

Via electronic mail
Ms. Kathy Toy
ktoy79@gmail.com

Via electronic mail
Ms. Elizabeth Lynch
emseeskin@gmail.com

Via electronic mail
The Honorable Carolyn Drblik
President, Board of Trustees
Niles-Maine District Library
6960 West Oakton Street
Niles, Illinois 60714
librarytrustees@nileslibrary.org

RE: OMA Request for Review – 2021 PAC 68226; 2021 PAC 68239

Dear Ms. Toy, Ms. Lynch, and Ms. Drblik:

This consolidated determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2020)).

BACKGROUND

On October 28, 2021, Ms. Kathy Toy submitted a Request for Review (2021 PAC 68239) to the Public Access Bureau alleging that the Board of Trustees (Board) of the Niles-Maine District Library (Library) violated OMA at its October 20, 2021, meeting by restricting her ability to address members of the Board. Specifically, she asserted that she was speaking during public comment but was interrupted after she referenced the Board President, Carolyn Drblik, by name. Ms. Toy stated that the Board had recently changed its rules on public comment. She asserted, however, that her comments complied with the rules:

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 2

Even trying to respect this narrow frame of allowed comment, I was addressing the whole board, only mentioning her name to describe her presidency, not directing my comment to her alone. She presided [*sic*] to bang[] her gavel several times, screaming at me, saying I was out of order and to sit down.^[1]

On November 1, 2021, Ms. Elizabeth Lynch submitted a Request for Review (2021 PAC 68226) also alleging that the Board improperly restricted Ms. Toy's comments at the October 20, 2021, meeting. She contended that "cutting off public comments directed at particular trustees places an unnecessary and unfair limit on the speech of residents. It is appropriate for residents to take issue with the actions of one or more trustees on a public board."² Ms. Lynch further alleged that the recently revised rules on public comment have been inconsistently enforced. She alleged that Ms. Toy "was not even given warning and a chance to change the wording of her comments" while other members of the public have been permitted to comment without strictly adhering to the rules.³

This office construed Ms. Toy's and Ms. Lynch's Requests for Review as alleging a violation of section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)). Accordingly, on November 5, 2021, this office forwarded copies of the Requests for Review to the Board and asked it to provide this office with a written response addressing the allegations, together with copies of the October 20, 2021, meeting agenda, minutes, and any Board policies or rules governing public comment. On November 22, 2021, this office received the requested response and links to posted copies of the meeting materials and a recording of the meeting. On December 1, 2021, this office forwarded a copy of the Board's response to Ms. Toy and Ms. Lynch. Ms. Toy and Ms. Lynch submitted replies on December 27, 2021, and December 29, 2021, respectively.

As an initial matter, the Board questioned in its response to this office the standing of Ms. Toy and Ms. Lynch to submit a Request for Review of the alleged improper restriction on public comment because they were able to complete their own comments at the October 20, 2021, meeting. Specifically, the Board asserted that "[w]hile Ms. Toy was the person speaking, she finished her remarks and was now sharing the remarks of another

¹E-mail from Kathy Toy to [Public Access Bureau] (October 28, 2021).

²E-mail from Elizabeth Lynch to [Public Access Bureau] (November 1, 2021).

³E-mail from Elizabeth Lynch to [Public Access Bureau] (November 1, 2021).

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 3

individual who was not present."⁴ The Board contended that "there is an argument that neither person has standing to challenge the actions of the Library as it is disputed whether there is any right to read off the comments of another speaker."⁵

In reply to this office, Ms. Toy asserted that "President Drblik said early on in her presidency that it was OK to read other people's comments that could not be there."⁶ She stated that President Drblik had indicated at the Board's June 16, 2021, meeting that reading the comments of another person who could not attend would be fine. Additionally, she asserted that the comments "represented [her] views, as such they can be considered [her] comments."⁷

DETERMINATION

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2020)) 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." 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."

The primary objective when construing the meaning of a statute is to ascertain and give effect to the intent of the General Assembly. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The most reliable indicator of legislative intent is the statutory language, given its plain and ordinary meaning." *Gaffney v. Board of Trustees of Orland Fire Protection District*, 2012 IL 110012, ¶56, 969 N.E.2d 359, 372 (2012). See *Hayashi v. Illinois Department of Financial and Professional Regulation*, 2014 IL 116023, ¶16, 25 N.E.3d 570, 576 (2014) ("Where the language of a statute is clear and unambiguous," a reviewing body "may not depart from the

⁴Letter from Mallory A. Milluzzi, Library Attorney, Klein, Thorpe and Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2021), at [2].

⁵Letter from Mallory A. Milluzzi, Library Attorney, Klein, Thorpe and Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2021), at [2].

⁶Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

⁷Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 4

plain language by reading into the statute exceptions, limitations, or conditions that the legislature did not express.").

Under the plain language of section 2.06(g), "any person" shall be allowed a chance to address public officials. There is no exception in section 2.06(g) for speakers who wish to address public officials on behalf of another person who is not present at a meeting. Further, section 3.5(a) does not restrict a person who believes a public body infringed upon another individual's statutory right to address the public body from filing a Request for Review. Rather, section 3.5(a) states 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[.]" The Public Access Bureau has previously determined that it may undertake a review of a public body's rules or practices concerning public comment, so long as there is an allegation that the rules were applied in a manner that restricted a member of the public from exercising his or her statutory right to address that public body. Ill. Att'y Gen. PAC Req. Rev. Ltr. 50371, issued November 30, 2017, at 2. Accordingly, this office will review Ms. Toy's as well as Ms. Lynch's allegation that Ms. Toy was improperly restricted from addressing the Board.

As noted above, section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2020)) provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body." A public body violates section 2.06(g) of OMA when it: (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 when those rules are enforced to 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.

OMA does not specifically address the nature of rules that a public body may permissibly adopt, but a board may generally adopt rules to maintain order and decorum at public meetings to 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. 14-0012, issued September 30, 2014, at 5 (a public body may promulgate reasonable "time, place and manner" rules aimed at preserving order and decorum). Such rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 923-25 (N.D. Ill. 2009). Although a public body may enforce rules regarding decorum, content-based restrictions must be narrowly construed. *I.A. Rana Enterprises, Inc.*, 630 F. Supp. 2d at 922-23.

The Public Access Bureau has previously reviewed a public body's decision to prohibit a speaker from completing his public comments based on a rule that prohibited

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 5

"personal attacks against others" or "rude or slanderous remarks." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, issued April 5, 2016, at 3. In that matter, this office emphasized: "[W]hether a remark constitutes a 'personal attack' is an entirely subjective question that is necessarily dependent upon the listener's personal perspective. When criticism involves the conduct of present or former public officials in the performance of their public duties, significant latitude must be allowed." Ill. Att'y Gen. PAC Req. Rev. Ltr. 39069, at 3. Thus, a public body misapplies a rule prohibiting "personal attacks" when a comment pertains to a public official's handling of public business in the absence of information indicating that the comment was disruptive or would have interfered with the efficiency of the meeting. *Compare* Ill. Att'y Gen. PAC Req. Rev. Ltr. 50824, issued July 10, 2018 (restricting comments criticizing public official by name impermissible where there was no indication that the remarks would have disrupted the order and decorum of the meeting) *with* Ill. Att'y Gen. PAC Req. Rev. Ltr. 46149, issued April 10, 2018 (unable to conclude that board violated section 2.06(g) because recording of meeting reflected that commenter's demonstrative actions and conduct disrupted decorum of meeting).

In its response to this office, the Board stated that its rules governing public comment are contained in Policy 3.27 of its Handbook. Rule 9 of that policy provides: "9. Abusive and profane comments will not be permitted and shall promptly be ruled out of order by the President or other presiding officer."⁸ Additionally, the policy states: "All public comment shall be addressed to the Board as a whole and no comments shall be addressed to individual members of the Board, Library staff or other members of the public."⁹ The Board asserted that its rules are reasonable on their face because they "are content and viewpoint neutral and serve the significant government interest of maintaining civility and decorum. Speakers are only subject to restriction when their speech disrupts, disturbs or otherwise impedes the orderly conduct of the Library Board meeting."¹⁰ It argued that the situation during the October 21, 2021, meeting was comparable to the situations in cases where the court found that the public body did not improperly enforce rules prohibiting "personal attacks" and other abusive comments at meetings, such as *Steinburg v. Chesterfield County Plan. Comm'n*, 527 F.3d 377 (4th Cir. 2008) and *Scroggins v. City of Topeka, Kan.*, 2 F. Supp. 2d 1362 (D. Kan. 1998).

⁸Niles-Maine District Library, Handbook, Section III – Administrative and Service Policies, 3.27 Public Participation and Comment at Board Meeting.

⁹Niles-Maine District Library, Handbook, Section III – Administrative and Service Policies, 3.27 Public Participation and Comment at Board Meeting.

¹⁰Letter from Mallory A. Milluzzi, Library Attorney, Klein, Thorpe and Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2021), at [3].

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 6

The Board acknowledged that it intervened when Ms. Toy referenced the Board President by name, but it contended that the Board President's "actions were her attempt to operate an efficient and respectful meeting in the face of Ms. Toy's abusive comments[.]" and that calling out the Board President by name "was to allege that President Drblik was incompetent."¹¹ It contended that President Drblik made a reasonable judgment call under the circumstances to maintain decorum and stop or prevent personal attacks against Board members. The Board asserted, in relevant part:

It is important to note that the point at which speech violates decorum is not mathematically determinable and as such, officials presiding over such meetings must have discretion, under the 'reasonable time, place and manner' constitutional principle to set subject matter agendas, and to cut off speech which they reasonably perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, whether by virtue of its irrelevance, its duration, or its very tone and manner.^[12]

Additionally, the Board argued that it had read aloud the rules before the public comment session and, therefore, the public was put on notice of those rules.

In reply to that answer, Ms. Toy denied that she was making personal attacks against President Drblik: "I simply said her name to describe her presidency. I did not attack her."¹³ She disputed the Board's claim that her comments were abusive, asserting that she was cut off before she could even complete her comments: "The Library attorney is assuming by mentioning President Drblik's name that I was going to call her incompetent. That's quite a leap without knowing what the rest of my comments were going to be."¹⁴ Ms. Toy also contended that she had not made any specific allegations against President Drblik and thus the circumstances at issue were distinguishable from the facts in *Scroggins* and other cited cases.

¹¹Letter from Mallory A. Milluzzi, Library Attorney, Klein, Thorpe and Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2021), at [4].

¹²Letter from Mallory A. Milluzzi, Library Attorney, Klein, Thorpe and Jenkins, Ltd., to Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (November 22, 2021), at [5].

¹³Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

¹⁴Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 7

She acknowledged that President Drblik read aloud the public comment rules before the comment session began, but argued that the rules had never been previously interpreted to prohibit the mentioning of a trustee by name. Thus, she "fully expected [her] comments fit within the rules as they had been enforced before."¹⁵

In her reply, Ms. Lynch similarly asserted that the comments did not amount to a personal attack and were not abusive in nature. She argued that Ms. Toy "spoke about the Board President in the third person, addressing her comments to all the trustees."¹⁶ She further contended that the comments pertained to the work of the Board:

Kathy Toy's comments were clearly about issues at hand and had nothing to do with personal matters between her and Carolyn Drblik. Kathy Toy argues that the board is negligent in their duties by not discussing the levy at the meeting and thanks the board for adding the filling of vacant positions to the agenda. * * * As Board President, Carolyn Drblik is responsible for setting the agenda, and so she is uniquely responsible for scheduling discussion of the levy, which was the subject of Kathy Toy's comments.^[17]

Ms. Lynch also maintained that the Board has inconsistently enforced its rules on public comment. She asserted that the Board announced different sets of rules for various meetings held between July and October and made, or attempted to make, other changes to the public comment sessions without adequate notice or explanation to the public.

This office has reviewed the portion of the October 20, 2021, meeting during which Ms. Toy addressed the Board.¹⁸ Ms. Toy began by identifying herself and stating: "Some trustees on the library board have been extremely negligent in their fiduciary responsibilities by not discussing the levy at this meeting. If anything, the Board President should know the levy has

¹⁵Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

¹⁶Letter from Kathy Toy to [Teresa Lim] (December 27, 2021).

¹⁷Letter from Elizabeth Lynch to Teresa Lim, Assistant Attorney General, Public Access Bureau, Illinois Attorney General (December 29, 2021), at 3.

¹⁸NMDLibrary, *Regular Board Meeting – October 20, 2021*, YouTube (October 20, 2021), <https://www.youtube.com/watch?v=kJM5NO1LXAo> (last visited March 20, 2023), 8:45.

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 8

to be discussed in October. She's been on the library board for eight years."¹⁹ Ms. Toy further commented on the levy issue and expressed her opinion that the board was not giving enough time at meetings to discuss it. She then moved to a different topic, the filling of certain library positions, and thanked the board for its consideration of that matter. Ms. Toy next stated:

And these comments are from Jeanette Leash. She could not make it tonight. This board continues to act as though it has no idea what a library board is supposed to do. Despite having served on the library board for a number of years, the president is being – Carolyn Drblik presidency's – is being run as if the...^[20]

At that point, the Board President brought down her gavel and stated: "You'll have to be seated. Thank you for your comment."²¹ A chatter then ensued in the room. The Board President responded to the chatter, in part, by stating "no direct comments."²² Ms. Toy walked away from the podium, and another individual stepped up to comment.

Based on this office's review of the video recording and parties' arguments, this office is unable to determine that Ms. Toy's comments on behalf of another individual interfered with the efficiency of the meeting or could be reasonably anticipated to be a prelude to personal attacks against a Board member. Up until her reference to Ms. Drblik, Ms. Toy's remarks focused on issues directly pertaining to library business, such as a levy. Ms. Toy's comments expressed disapproval of the Board President's leadership, but it is not apparent that her comments were abusive or otherwise disruptive to the meeting. Ms. Toy did not raise her voice, make threats, or otherwise engage in combative behavior that appeared to create a disturbance or interfere with the decorum of the meeting. Further, there is no indication that Ms. Toy intended to comment on personal matters unrelated to library business. *See Scroggins*, 2 F. Supp. 2d at 1368 (ample evidence showed that "Scroggins principally wanted to reveal personal matters concerning his family and Washington, to attack Washington's character as a result of these matters, and to use this televised public forum as simply another venue for his attack on

¹⁹NMDLibrary, *Regular Board Meeting – October 20, 2021*, YouTube (October 20, 2021), <https://www.youtube.com/watch?v=kJM5NO1LXAo> (last visited March 20, 2023), 8:45.

²⁰NMDLibrary, *Regular Board Meeting – October 20, 2021*, YouTube (October 20, 2021), <https://www.youtube.com/watch?v=kJM5NO1LXAo> (last visited March 20, 2023), 9:20.

²¹NMDLibrary, *Regular Board Meeting – October 20, 2021*, YouTube (October 20, 2021), <https://www.youtube.com/watch?v=kJM5NO1LXAo> (last visited March 20, 2023), 10:35.

²²NMDLibrary, *Regular Board Meeting – October 20, 2021*, YouTube (October 20, 2021), <https://www.youtube.com/watch?v=kJM5NO1LXAo> (last visited March 20, 2023), 10:35.

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 9

Washington."); *Steinburg*, 527 F.3d at 380 (agreeing with lower court's finding that plaintiff "was removed from the podium and the meeting because he refused to address the only topic for which the public hearing had been opened and because he behaved in a hostile manner that threatened to disrupt the orderly progress of the meeting."). Although Ms. Toy called out the Board President by name, this reference is insufficient evidence to illustrate that her comments posed a reasonable threat to the orderly progress of the meeting. *See* Ill. Att'y Gen. PAC Req. Rev. Ltr. 67369, issued October 7, 2021, at 7 (noting that "disagreement over the content of a speaker's comments, such as comments expressing disapproval of a board's management of public business, is not evidence that the speaker is disturbing a meeting"). Under these circumstances, this office concludes that the Board violated section 2.06(g) of OMA by improperly restricting Ms. Toy's public comments during its October 20, 2021, meeting.

In accordance with the conclusions expressed in this determination, this office requests that the Board permit members of the public to identify and/or address individual Board trustees at future meetings when commenting on matters of public business, notwithstanding that the trustees are not required to respond to comments.²³ That includes permitting members of the public to refer by name to the individuals about whom they are criticizing or otherwise commenting.

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,



TERESA LIM
Supervising Attorney
Public Access Bureau

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²³The Public Access Bureau has previously determined that 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.

Ms. Kathy Toy
Ms. Elizabeth Lynch
The Honorable Carolyn Drblik
March 20, 2023
Page 10

cc: *Via electronic mail*
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