



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

May 2, 2014

Mr. Kevin DuJan
P.O. Box 2373
Orland Park, Illinois 60462

Ms. Megan Fox
P.O. Box 2373
Orland Park, Illinois 60462

Mr. Dennis G. Walsh
Klein, Thorpe and Jenkins, Ltd.
15010 South Ravinia Avenue
Orland Park, Illinois 60462-5353

RE: OMA Request for Review – 2014 PAC 27713 and 27771

Dear Ms. Fox and Mr. Walsh:

This determination is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2012)). For the reasons set forth below, the Public Access Bureau concludes that the Board of Library Trustees of the Village of Orland Park (Board) violated OMA during its January 20, 2014, public meeting by imposing restrictions on public comment which were not authorized by the Board's established and recorded rules.

On January 21, 2014, Ms. Megan Fox submitted a Request for Review alleging that the Board violated the rules it had established pursuant to section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)) to govern public comment by prohibiting her and other individuals from commenting on computer use policies and alleged sexual misconduct at the library. She also alleged that the Board held public comment at the end of the meeting rather than at the beginning, in violation of its rules. On January 27, 2014, Mr. Kevin DuJan also submitted a Request for Review alleging that the Board improperly restricted him and other individuals from commenting on computer use policies and related matters at the same meeting. On January 31, 2014, and February 3, 2014, respectively, this office forwarded copies of the Requests for Review to the Board and asked it to respond to the allegations and to provide a copy of its rules governing public comment. The Board submitted a single response addressing both Requests for

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Review on March 3, 2014; Mr. DuJan and Ms. Fox replied on March 19, 2014. Because the two Requests for Review concern similar allegations, this office has consolidated these matters for response.

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 office construes section 2.06(g) as entitling members of the public to address a public body subject only to the public body's reasonable rules relating to procedure and decorum. Ill. Att'y Gen. PAC Rev. Ltr. 20198, at 2, issued September 19, 2012.

This office has reviewed a copy of the rules governing public comment that were in effect at the time of the Board's January 20, 2014, meeting. The rules limit public comment to library business and prohibit comments on individual personnel, confidential patron matters, advocating for a candidate for public office, or matters that the Board will discuss in closed session. These rules, however, do not restrict commentary on library policies or library business that has been the subject of public comment at previous meetings.

This office also has reviewed a video recording of the public comment portion of the January 20, 2014, meeting. The recording shows that the Board President twice interrupted Mr. DuJan when he attempted to address the Library's computer use and Internet access policies, and indicated that "we're not talking about computers today."¹ The Board President further stated that its "we've had four consecutive Board meetings where you have discussed computers and Internet, we're aware of your concerns and we'll certainly be addressing it as soon as we have our full complement of four Board members."² Ms. Fox then noted that the Board's rules governing public comment contained no restriction on those subjects. The Board president reiterated that "our Board attorney has advised us that we have no more comments being directed about computers."³ A third individual also briefly addressed the Board, and expressed disappointment that he was unable to comment on that topic.

¹Board of Library Trustees of the Village of Orland Park, Meeting, January 20, 2013, available at <http://www.youtube.com/watch?v=POrI0qetaI4>, minutes 0:52 – 0:56.

²Board of Library Trustees of the Village of Orland Park, Meeting, January 20, 2013, available at <http://www.youtube.com/watch?v=POrI0qetaI4>, minutes 5:33 – 5:51.

³Board of Library Trustees of the Village of Orland Park, Meeting, January 20, 2013, available at <http://www.youtube.com/watch?v=POrI0qetaI4>, minutes 6:23 – 6:29.

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The Board's response to this office emphasized that Mr. DuJan and Ms. Fox were permitted to address the Board at the January 20, 2014, meeting, and that they and others have addressed the Board's computer use policies during previous meetings and also in writing. The response further stated that "the presiding officer of the public body may certainly refrain a speaker from undue repetition and endless comments on the same subject matter. Otherwise, the reasonable governmental purpose of conducting a civil and productive meeting would be defeated."⁴

The Board's rules governing public comment in effect at the time of the meeting limited public comment to library business and prohibited comments on certain topics. The rules did not, however, address repetitive comments or prohibit speakers from addressing the library's computer use policies or other library business on more than one occasion. Further, based on this office's review of the recording, there is no indication that refusing to allow comments on these topics was necessary to maintain order or decorum at the meeting. Accordingly, we conclude that the Board violated section 2.06(g) of OMA at its January 20, 2014, meeting by arbitrarily precluding public comment on the library's computer use policies. This office cautions the Board to avoid restricting public comment on substantive bases that are not addressed by its established and recorded rules.

Ms. Fox also alleges that the Board violated section 2.06(g) of OMA by holding the public comment period at the end of the meeting rather than at the beginning, as was provided for in its rules. Ms. Fox asserts that the Board moved the public comment period in an attempt to discourage speakers who did not want to attend the entire meeting from addressing the Board.

Counsel for the Board stated in response that "it is axiomatic that a public body has the legal right to amend its agenda during the course of a public meeting to move agenda items to different places on the agenda, and there is nothing in the Open Meetings Act or otherwise that requires a public comment period to be held at any particular point in a meeting."⁵ Counsel is correct in stating that nothing in section 2.06 specifies at what point in a meeting a public body must permit public comment. Moreover, we do not disagree with the proposition that, as a general principle, a public body may amend its agenda to change the order in which matters are addressed.

⁴Letter from Mr. Dennis G. Walsh, Klein, Thorpe & Jenkins, Ltd., to Steve Silverman, Assistant Bureau Chief, Public Access Bureau (March 3, 2014).

⁵Letter from Mr. Dennis G. Walsh, Klein, Thorpe & Jenkins, Ltd., to Steve Silverman, Assistant Bureau Chief, Public Access Bureau (March 3, 2014).

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In this case, however, the Board's rules expressly provided that a public comment period was to be held at the beginning of each monthly meeting. There is no indication that moving the public comment period to a later point in the meeting was necessitated by the need to consider other matters first, nor has counsel cited to any Board rule or policy that authorized the Board to suspend or disregard its adopted rules. Accordingly, to the extent that the Board's action was apparently inconsistent with the rules that the Board had adopted to govern public comment, we conclude that the Board violated section 2.06(g) of OMA.

The Public Access Counselor has determined that resolution of this matter does not require the issuance of a binding opinion. If you have any questions, please contact me at (312) 814-6756. This letter shall serve to close these matters.

Very truly yours,



STEVE SILVERMAN
Assistant Bureau Chief
Public Access Bureau

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