



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 9, 2019

PUBLIC ACCESS OPINION 19-002
(Request for Review 2018 PAC 55462)

OPEN MEETINGS ACT:
"Established" and Recorded
Rules for Public Comment

Mr. Martin Stack
19 East 1st Street
Hinsdale, Illinois 60521

The Honorable Marge Hubacek
President, Board of Education
Lyons Elementary School District 103
4100 Joliet Avenue
Lyons, Illinois 60534

Dear Mr. Stack and Ms. Hubacek:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2016)). For the reasons discussed below, this office concludes that the Lyons Elementary School District 103 (District) Board of Education (Board) violated OMA during its October 22, 2018, meeting by enforcing an unestablished and unrecorded rule limiting the public comment portion of the meeting to 15 minutes.

BACKGROUND

On October 24, 2018, the Public Access Bureau received a Request for Review from Mr. Martin Stack alleging that the Board improperly allotted a total of only 15 minutes to public comment during its October 22, 2018, regular meeting.¹ Mr. Stack stated that "[i]t had just become public knowledge that [the District] had hired a 6th grade English teacher for the

¹Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 2

2018-2019 school year after he was charged with 9 counts of Attempt Murder for shooting a person seven (7) times."² Mr. Stack further stated that "approximately 100 parents and members of the public as well as several politicians" attended the meeting and that "[m]any of these people wanted to speak during the Public Comment period to express their concerns and fears with the School Board."³ According to Mr. Stack, the Board announced at the meeting that, "in accordance with board rules that they 'had used before,'" members of the public would be permitted to speak for 3 minutes each for a total of 15 minutes for all speakers.⁴ Mr. Stack asserted that some members of the public who wished to address the Board were unable to do so because of the 15-minute cap on the public comment period:

The 15-minute time period elapsed just when a commissioner and other parents approached to talk. The Board refused to extend the 15 minute period, saying that they had already given the public enough time. Despite calls from many members of the public audience to let them talk, the Board refused to allow them to do so.⁵

Mr. Stack directed this office to the Board's policy manual posted on the District's website,⁶ and noted that although the policy pertaining to public participation at meetings limits comments to three minutes per person, it makes "no mention of a 15-minute cap in comments."⁷

On October 31, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the president of the Board, Ms. Marge Hubacek, and asked the Board to provide a written response to the allegations in the Request for Review, together with a copy of any Board

²Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

³Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

⁴Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

⁵Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

⁶Lyons Elementary School District 103, Policy Manual, §2:230 (adopted December 15, 2014), available at https://boardpolicyonline.com/?b=lyons_103.

⁷Letter from Martin Stack to Sarah Pratt, Public Access Counselor, Office of the Attorney General (October 24, 2018).

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 3

rules or policies governing public comment that were in effect at the time of the meeting.⁸ The Public Access Bureau also asked the Board to provide copies of the agenda, minutes, and recording, if any, of the open session portion of the October 22, 2018, meeting.⁹ Because the Public Access Bureau did not receive a response from the Board, on November 16, 2018, we sent a second request to the Board seeking the same materials.¹⁰

On November 19, 2018, the District's Interim Superintendent, Mr. Patrick Patt, provided a written response on behalf of the Board,¹¹ together with copies of the same public comment policy that Mr. Stack referenced and a handout entitled "Welcome to the Elementary School District No. 103 Board of Education Meeting" (Welcome Handout).¹² On November 20, 2018, the Public Access Bureau forwarded a copy of the Board's response to Mr. Stack; he did not reply.¹³ On December 17, 2018, this office properly extended the time within which to issue a binding opinion by 21 business days, to January 24, 2019, pursuant to section 3.5(e) of OMA.¹⁴

ANALYSIS

Under OMA, "[i]t is the public policy of this State that public bodies exist to aid in the conduct of the people's business[.]" 5 ILCS 120/1 (West 2016). 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."

⁸Letter from Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Marge Hubacek, President, Board of Education, Lyons School District 103 (October 31, 2018).

⁹Letter from Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Marge Hubacek, President, Board of Education, Lyons School District 103 (October 31, 2018).

¹⁰Letter from Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General to Marge Hubacek, President, Board of Education, Lyons School District 103 (November 16, 2018).

¹¹In its written response, the Board stated that it did not receive this office's October 31, 2018, correspondence until the date of its response.

¹²Letter from Patrick Patt, Interim Superintendent, Lyons Elementary SD 103, to Assistant Attorney General Teresa Lim, Office of the Attorney General (November 19, 2018).

¹³Letter from Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Martin Stack (November 20, 2018).

¹⁴Letter from Teresa Lim, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Martin Stack and Marge Hubacek, President, Board of Education, Lyons Elementary School District 103 (December 17, 2018).

The section of the Board's policy manual governing public comment provides:

**2:230 Public Participation at Board of Education
Meetings and Petitions to the Board**

At each regular and special open meeting, members of the public and District employees may comment to or ask questions of the Board of Education, subject to reasonable constraints.

The individuals appearing before the Board are expected to follow these guidelines:

1. Address the Board only at the appropriate time as indicated on the agenda and when recognized by the Board President.
2. Identify oneself and be brief. Ordinarily, comments shall be limited to 3 minutes. In unusual circumstances, and when an individual has made a request in advance to speak for a longer period of time, the individual may be allowed to speak for more than 3 minutes.
3. Observe the Board President's decision to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak.
4. Observe the Board President's decision to determine procedural matters regarding public participation not otherwise covered in Board policy.
5. Conduct oneself with respect and civility toward others and otherwise abide by Board policy, 8:30, Visitors to and Conduct on School Property. (Emphasis in original.)^[15]

Additionally, the Board's Welcome Handout describes, among other things, the Board's general order of business at regular meetings and provides information regarding how individuals may bring a matter before the Board. With respect to addressing the Board during a meeting, the Welcome Handout provides that "Board Policy states that members of the public shall be permitted to make comments at each meeting subject to the following time limitations:

¹⁵Lyons Elementary School District 103, Policy Manual, §2:230 (adopted December 15, 2014), available at https://boardpolicyonline.com/?b=lyons_103.

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 5

3 minutes per speaker, with a maximum of 15 minutes, per topic, per meeting."¹⁶

Section 2.06(g) requires that all public bodies subject to the Act provide an opportunity for members of the public to address public officials at open meetings. Nonetheless, the right to address public officials is not without limits. Section 2.06(g) expressly provides that individuals are entitled to address a public body subject to "the rules established and recorded by the public body." Although OMA does not specifically address the nature of rules that a public body may enforce during the public comment portion of an open meeting, ordinarily only "reasonable time, place and manner restrictions" which are content-neutral are permissible in such a designated public forum under the first amendment to the United States Constitution. *See, e.g., I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922-23 (N.D. Ill. 2009) (examining whether the application of city council's rules for public comment violated plaintiff's first amendment rights). Such rules must be reasonably necessary to protect a significant governmental interest and must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See Ill. Att'y Gen. Pub. Acc. Op. No. 14-012*, issued September 30, 2014, at 6-7 (rule requiring submission of a request to address a public body at least five working days in advance of a meeting was unreasonable under section 2.06(g)).

In its response to this office, the Board stated that the Welcome Handout "is placed on a table next to the agendas and sign in sheet at every board meeting."¹⁷ The Board directed this office's attention to the Welcome Handout's language limiting public comments to "a maximum of 15 minutes, per topic, per meeting[,]" and then stated in its response "that at all board meetings the board president reads the portion of the above-referenced handout [the 15-minute limitation language] out loud prior to 'Public Comment.'" The Board's response then notes that "this handout has been the past practice of the Board of Education for at least the last 10 years."¹⁸

This issue turns on the meaning of section 2.06(g) of OMA. When construing the meaning of a statutory provision, the primary objective is to ascertain the intent of the legislature. *DeLuna v. Burciaga*, 223 Ill. 2d 49, 59 (2006). "The plain language of the statute is the best indication of that intent, and if that language is clear and unambiguous, it must be given effect." *People v. Rinehart*, 2012 IL 111719, ¶24, 962 N.E.2d 444, 452 (2012). The plain

¹⁶Welcome to the Elementary School District No. 103 Board of Education Meeting handout (on file with author).

¹⁷Letter from Patrick Patt, Interim Superintendent, Lyons Elementary SD 103, to Assistant Attorney General Teresa Lim, Office of the Attorney General (November 19, 2018).

¹⁸Letter from Patrick Patt, Interim Superintendent, Lyons Elementary SD 103, to Assistant Attorney General Teresa Lim, Office of the Attorney General (November 19, 2018).

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 6

language of section 2.06(g) requires that a public body's rules governing public comment must be "established" as well as recorded by the public body. Black's Law Dictionary defines "establish" as: "To settle, make, or fix firmly; to enact permanently." Black's Law Dictionary (10th ed. 2014), *available at* Westlaw BLACKS. "Enact is defined as "[t]o make into law by authoritative act; to pass." Black's Law Dictionary (10th ed. 2014), *available at* Westlaw BLACKS.

Under these definitions, it is clear that Board Policy 2:230 was "established" and recorded by the Board, as the policy states that it was adopted on December 15, 2014, and it has been incorporated into the Board's formal policy manual. Accordingly, this policy sets forth the rules that govern public participation at Board meetings. Board Policy 2:230 provides that comments will ordinarily be limited to 3 minutes, but does not specify that the total public comment period may be capped at 15 minutes per topic per meeting.

Although the Welcome Handout indicates that under "Board Policy" members of the public are collectively limited to speaking for "a maximum of 15 minutes, per topic, per meeting[.]"¹⁹ this time restriction is not included in Board Policy 2:230. (Emphasis added.) In its response to this office, the Board explained that these restrictions are read aloud at each meeting and that using the Welcome Handout "has been the past practice of the Board of Education for at least the last 10 years[.]" but it did not address the discrepancy between the Welcome Handout and Board Policy 2:230. Further, the Board did not assert that it had taken formal action to adopt the policies in the Welcome Handout, or that Board Policy 2:230 had been revoked or otherwise formally amended to limit the total public comment period to 15 minutes per topic per meeting. Nothing in OMA suggests that past practices which have not been formally incorporated into a public body's rules are established and recorded by the public body within the meaning of section 2.06(g), and may be enforced to limit public comment.

The Board did not dispute Mr. Stack's claim that some members of the public who wished to address the Board during the public comment portion of its October 22, 2018, meeting were prevented from doing so because the Board limited the public comment time period to 15 minutes.²⁰ Certainly, a public body has inherent authority to conduct its meeting in an efficient

¹⁹Welcome to the Elementary School District No. 103 Board of Education Meeting handout (on file with author).

²⁰Board Policy 2:230 grants the Board President discretion "to shorten public comment to conserve time and give the maximum number of individuals an opportunity to speak[.]" and "to determine procedural matters regarding public participation not otherwise covered in Board policy." Lyons Elementary School District 103, Policy Manual, §2:230 (adopted December 15, 2014), *available at* https://boardpolicyonline.com/?b=lyons_103. However, in its response to this office, the Board did not argue that the 15-minute cap served to maximize the number of individuals who had an opportunity to speak. It also did not argue or provide information to show that the 15-minute cap was authorized by Board Policy 2:230.

manner, and the lack of a specific time period for public comment in established and recorded rules does not necessarily mean that public comment must be allowed to continue indefinitely. It appears, however, that a large number of persons attended this meeting in reference to a specific matter and limiting comment on that topic to 15 minutes precluded all but a few commenters from expressing their concerns. There is no evidence that limiting comments was necessary to maintain decorum or that extending the comment period would have unduly interfered with the orderly transaction of public business. Under these circumstances, this office concludes that the Board violated section 2.06(g) of OMA by imposing an unestablished and unrecorded rule limiting public comment to 15 minutes during its October 22, 2018, meeting.²¹

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:

- 1) On October 22, 2018, Mr. Martin Stack attended the regular meeting of the Lyons Elementary School District 103 Board of Education.
- 2) On October 24, 2018, Mr. Stack submitted a Request for Review to the Public Access Counselor alleging that the Board enforced a rule that was not part of its policy manual to restrict the total public comment portion of the October 22, 2018, meeting to 15 minutes. He also alleged that multiple members of the public who intended to address the Board about the recent hiring of a teacher charged with a serious crime were precluded from doing so by the Board's imposition of a 15-minute cumulative limit on discussion on the topic. Mr. Stack'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 2016)).
- 3) On October 31, 2018, the Public Access Bureau forwarded a copy of the Request for Review to the president of the Board. The Public Access Bureau requested a copy of any Board rules or policies governing public comment that were in effect at the time of the October 22, 2018, meeting, as well as copies of the agenda, minutes, and recording, if any, of the open session portion of that meeting.
- 4) On November 16, 2018, this office sent the District an additional copy of the Request for Review and this office's October 31, 2018, letter, along with a letter noting the lack of a response from the District and asking the District to provide the requested materials.

²¹This binding opinion does not analyze the propriety of an established and recorded rule limiting public comment to 15 minutes per topic per meeting because the Board's lack of an established and recorded rule to that effect is dispositive. This office notes, however, that there are circumstances in which the application of such a rule would tend to unreasonably restrict the right to address public officials, such as a meeting with only one, highly-controversial topic on the agenda.

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 8

5) On November 19, 2018, the District's interim superintendent provided a written response on behalf of the Board. The response also included copies of the Board's public comment policy that Mr. Stack referenced and a handout entitled "Welcome to the Elementary School District No. 103 Board of Education Meeting."

6) On November 20, 2018, the Public Access Bureau sent a copy of the Board's response to Mr. Stack; he did not reply.

7) On December 17, 2018, this office properly extended the time within which to issue a binding opinion by 21 business days, to January 24, 2019, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

8) 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."

9) Board Policy 2:230 provides that "[o]rdinarily, comments shall be limited to 3 minutes" per individual. This policy does not, however, state that the public comment period may be limited to 15 minutes per topic per meeting.

10) The Welcome Handout indicates that "Board Policy states that members of the public shall be permitted to make comments at each meeting subject to the following time limitations: 3 minutes per speaker, with a maximum of 15 minutes, per topic, per meeting." The Board cited this handout as its basis for limiting the public comment period to 15 minutes.

11) It is undisputed that during its October 22, 2018, meeting, the Board limited the time period for public comment to 15 minutes despite the protests of multiple members of the public who wished to address the Board but were not given the opportunity.

12) The Attorney General concludes that the Board violated section 2.06(g) of OMA when it limited the public comment period of its October 22, 2018, meeting to 15 minutes. Although the Board stated that it has relied on its Welcome Handout for a decade, the Board did not demonstrate that it had taken action to establish or otherwise adopt the policies in the handout. Board Policy 2:230 contains the Board's established and recorded public comment rules, as formally adopted by the Board and incorporated into the Board's policy manual. Although the Welcome Handout attributes the restriction of 15 minutes of public comment, per topic, per meeting, to "Board Policy," Board Policy 2:230 contains no such restriction.

Mr. Martin Stack
The Honorable Marge Hubacek
January 9, 2019
Page 9

Therefore, it is the opinion of the Attorney General that the Lyons Elementary School District 103 Board of Education violated the Open Meetings Act when it limited the public comment portion of its October 22, 2018, meeting to 15 minutes. In accordance with these findings of fact and conclusions of law, the Board is directed to take appropriate action to comply with this opinion by refraining from applying unestablished and unrecorded rules to restrict public comment at future meetings and by otherwise conducting its future meetings in full compliance with OMA.

This opinion shall be considered a final decision of an administrative agency for the purpose of administrative review under the Administrative Review Law. 735 ILCS 5/3-101 *et seq.* (West 2016). An aggrieved party may obtain judicial review of the decision by filing a complaint for administrative review in the Circuit Court of Cook County or Sangamon County within 35 days of the date of this decision, naming the Attorney General of Illinois and Mr. Martin Stack as defendants. *See* 5 ILCS 120/7.5 (West 2016).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General

CERTIFICATE OF SERVICE

Sarah L. Pratt, Public Access Counselor, hereby certifies that she has served a copy of the foregoing Binding Opinion (Public Access Opinion 19-002) upon:

Mr. Martin Stack
19 East 1st Street
Hinsdale, Illinois 60521
mstack@mstacklaw.com

The Honorable Marge Hubacek
President, Board of Education
Lyons Elementary School District 103
4100 Joliet Avenue
Lyons, Illinois 60534
hubacekm@sd103.com

by causing a true copy thereof to be sent electronically to the addresses as listed above and by causing to be mailed a true copy thereof in correctly addressed, prepaid envelopes to be deposited in the United States mail at Springfield, Illinois on January 9, 2019.


SARAH L. PRATT
Public Access Counselor

SARAH L. PRATT
Public Access Counselor
Office of the Attorney General
500 South Second Street
Springfield, Illinois 62701
(217) 557-0548