

Memo

To: Village President
From: Robert Kosin, Director of Administration
CC: Board of Trustees
Date: September 19, 2014
Re: Public Comment Rules

Since the adoption of rules for Public Comment, the Attorney General issued a binding opinion (14-009) that the requirement to provide an address as a condition to speak is a violation of the Open Meetings Act.

Section 2.06(g) specifically provides that “[a]ny person shall be permitted an opportunity to address public officials[,]” (emphasis added) therefore a person’s right to comment at an open meeting is not contingent upon where he or she resides...a rule requiring speakers to provide their home addresses prior to speaking [the Attorney General] would conclude such a rule would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g). Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings. Therefore, [the Attorney General] conclude[s] that requiring speakers to state their home address prior to addressing public bodies violates section 2.06(g) of OMA, even if such a rule is established and recorded by the public body.

The rule for Public Comment as adopted by the Board of Trustees on August, 2012 is proposed to be amended by the Board’s own action by striking the reference to the speaker’s address. Similarly an amendment will be pursued for the other adopted Public Comments adopted by the other Boards, Commissions and Committees of the Village.

RULES PERTAINING TO PUBLIC COMMENT

Board of Trustees

Village Board meetings are not Open Public Forums. Village Board meetings are legislative sessions for the corporate authorities held for the specific purpose of conducting the business of the Village.

While the Village Board is not required by law to allow any members of the general public to speak at its meetings, it has allowed the public to speak at Village Board meetings for the limited purpose of addressing the Board with concerns or comments regarding issues of Village business. Village business means those matters for which the Village Board has jurisdiction or authority to act. Matters that do not pertain to Village business will not be heard. The rules below have been adopted to provide an efficient forum for the public to comment on Village business.

When addressing the Village Board for public comment, the following rules are to be strictly observed:

- (1) Speakers are to address the Board from the podium at the front of the room, clearly stating the speaker's name ~~and address~~ before commenting.
- (2) Each person desiring to speak will be allowed a single, 3 minute comment period.
- (3) A maximum of 30 minutes of public comments will be accepted at each meeting. The Board may extend the comment period at its discretion.
- (4) All public comments shall be addressed to the Board as a whole. No comments may be addressed to individual Board Members, the Village Administrator, Village Attorney, members of Village staff or other members of the public.
- (5) There shall be no debate on any issue raised during public comments. Cross-examination of speakers will not be allowed. Matters raised under public comment may be referred by the President to the Village staff for review.
- (6) Any paper or written statement which the speaker would like to present to the Board should be submitted to the Village Clerk 48 hours prior to the meeting. No handouts will be accepted during the meeting.
- (7) All members of the public addressing the Village Board shall, at all times, maintain proper decorum. Proper decorum includes:
 - a. No person shall speak until recognized by the President.
 - b. All persons shall address the Village Board from the podium. Statements made from the audience shall be out of order.
 - c. All comments shall be courteous, respectful and to the point.
 - d. Statements made shall not impugn motives; be contentious, slanderous or boisterous.
 - e. No obscene or insulting statements shall be allowed.
 - f. Threats or personal attacks are prohibited.
- (8) Any person called out of order by the President shall immediately stop speaking and shall abide by the President's direction.



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

September 4, 2014

PUBLIC ACCESS OPINION 14-009
(Request for Review 2014 PAC 29739)

OPEN MEETINGS ACT:
Information Required of
Speakers Wishing to
Provide Public Comment

Ms. Janet Hughes
1283 Abbey Oaks Drive
Lemont, Illinois 60439

The Honorable Brian K. Reaves
Mayor, Village of Lemont
418 Main Street
Lemont, Illinois 60439

RE: OMA Request for Review – 2014 PAC 29739

Dear Ms. Hughes and Mayor Reaves:

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 following reasons, this office concludes that the Lemont Village Board (Board) violated OMA during the public comment portion of its April 14, 2014, regular meeting by requiring Ms. Janet Hughes to state her home address in order to address the Board.

BACKGROUND

On June 6, 2014, Ms. Hughes submitted a Request for Review alleging that the Board, acting through Mayor Brian Reaves and Village Attorney Jeff Stein, "pressured" and "forced" her to state her home address for the record prior to being permitted to provide public

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comment during the Board's April 14, 2014, meeting.¹ In support of her allegation, Ms. Hughes appended an affidavit in which a witness stated, "[d]uring the public Board meeting, I witnessed Mayor Brian Reaves and Village Attorney Jeff Stein force Janet Hughes to state her home address for the record in order for her to participate during public comments."² The Public Access Bureau interpreted this Request for Review as an allegation that the Board violated section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2012)), which provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body[.]" by predicating Ms. Hughes' right to address the Board on the public disclosure of her home address.

On June 13, 2014, the Public Access Bureau sent a copy of Ms. Hughes' Request for Review to the Mayor and asked for a written response to the allegations, a copy of the Board's rules governing public comment, and the agenda and minutes of the April 14, 2014, Board meeting. In addition, if the Board had adopted a rule requiring an individual wishing to make a public comment at a Board meeting to publicly state his or her home address, the Public Access Bureau requested that the Board explain its rationale for such a rule. In the absence of such a rule, then the Public Access Bureau asked for an explanation for requiring Ms. Hughes to provide her home address at the April 14, 2014, meeting.³

Counsel for the Village, Mr. Andrew S. Paine, responded in a letter dated June 30, 2014. Mr. Paine furnished copies of the agenda and minutes from the April 14, 2014, meeting and a copy of the Village ordinance governing public comment at Board meetings. Mr. Paine explained that the Board "has a long standing custom and practice of asking any member of the public wishing to address the Board to provide his or her address."⁴ Mr. Paine also asserted that although Ms. Hughes initially declined the Mayor's request to state her home address for the record at the April 14, 2014, meeting, Ms. Hughes "provided her address by her own volition and not as a requirement to speak before the Board" and was "afforded the opportunity to address the

¹E-mail from Janet Hughes to Sarah Pratt, Public Access Counselor, Office of the Attorney General (June 6, 2014).

²Affidavit of Victor R. Fisher, ¶ 5 (June 5, 2014).

³Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Mayor Brian K. Reaves, Village of Lemont (June 13, 2014).

⁴Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

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Mayor and the Board, an opportunity to which she took full advantage."⁵ Mr. Paine further stated that Ms. Hughes "ha[d] followed [the rules and customs] in the past without objection."⁶

On July 9, 2014, this office forwarded the Village's response to Ms. Hughes.⁷ On July 22, 2014, Ms. Hughes replied via e-mail and provided a video recording of the relevant portion of the April 14, 2014, meeting as an attachment in mp4 format. Ms. Hughes stated that Village Ordinance O-84-10 does not require a participant to provide a home address in order to publicly address the Board. Ms. Hughes also asserted that "customs and practices" do not constitute "rules" within the meaning of section 2.06(g) of OMA. Finally, Ms. Hughes reiterated that a person's home address is private information, and claimed that she does not recall publicly stating her address at prior public meetings.⁸ The Board's attorney was copied on Ms. Hughes' response.

ANALYSIS

This office has reviewed the video recording of the exchange among Ms. Hughes, Mayor Reaves, and Mr. Stein during the April 14, 2014, Board meeting. The video shows Mayor Reaves introducing the "audience participation" period by asking anyone who wished to participate to approach the podium and state his or her name and address for the record. Mayor Reaves also reminded the attendees to limit their comments to three minutes and to confine their comments to new areas.

Ms. Hughes approached the podium, stated her name, and said that she was a taxpayer from Lemont. At that point, Mayor Reaves stated, "I need your address, too[.]"⁹ Ms. Hughes provided the name of her street and the nearest intersection to her home, and then began her comments. The Mayor again stated that he needed her full address. Ms. Hughes attempted to continue her comments without providing her address, but Mayor Reaves said "I have been

⁵Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

⁶Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

⁷Letter from Timothy O'Brien, Assistant Attorney General, Public Access Bureau to Janet Hughes (July 9, 2014).

⁸Letter from Janet Hughes to Timothy O'Brien, Assistant Attorney General, Public Access [Counselor], Office of the Illinois Attorney General (July 22, 2014).

⁹Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

instructed by counsel that I need the exact address for public record for public conversations."¹⁰ Ms. Hughes responded that she was "not comfortable" providing her complete address.¹¹ Mayor Reeves then publicly sought the counsel of Mr. Stein. The audio portion of the off-camera remarks of Mr. Stein is not entirely clear. However, Mr. Stein can be heard stating that a person's refusal to provide an address would not bar an individual from providing comment, but that it is "helpful."¹² Mr. Stein also noted that if Ms. Hughes did not wish to provide her address, the Board should allow her to speak and "take it for what it is."¹³ Following this exchange, Ms. Hughes stated her home address and continued addressing the Board.

Prior to January 1, 2011, the 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, now 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 a public body 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 which 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 assure 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 prescribe time limits for public comment. *See Wright v. Anthony*, 733 F.2d 575, 577 (8th Cir. 1984) (finding that a time limit for speakers at a public hearing served a significant governmental interest in conserving time and in ensuring that others had an opportunity to speak, thus did not violate the speaker's first amendment rights).

¹⁰Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹¹Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹²Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

¹³Video Recording: Village of Lemont Village Board, Regular Meeting, April 14, 2014 (on file with the Public Access Bureau).

The Village's ordinance governing public comment provides:

Persons who wish to address the Board on any matter may request recognition prior to the meeting, or during Audience Participation, or if the matter relates to a specific agenda item, during the discussion of that item. The President will attempt to accommodate such requests to the extent practicable by directing that such requests shall be heard during Audience Participation or during debate on a specific agenda item. The President may in his discretion set a time limit for each person's address, taking into account the number of persons wishing to be heard on a matter and the amount of village business requiring attention. The President or a majority of the Trustees present may extend the limitation of time or grant additional time to individual speakers and the President's denial of or limitation on any request may be overruled by a majority of the Trustees present. Provided, any failure to adhere to the provisions of this section, and any such restriction or limitation upon any speaker, shall not impair or affect any ordinance, resolution, motion or other action of the Board.¹⁴

The ordinance does not require that a member of the public state his or her home address before speaking at public meetings of the Board. In response to this office's inquiry, the Board confirmed that it has not promulgated such a rule.¹⁵ Rather, the Board referred to requiring members of the public to provide their home addresses before speaking at public meetings as a "custom and practice."¹⁶

The plain language of section 2.06(g) of OMA provides that individuals are entitled to address a public body subject only to a public body's established and recorded rules. Section 2.06(g) does not recognize conditions on speaking arising out of "custom and practice," unless those conditions are incorporated into the public body's rules. Here, the Board's established and recorded rules governing public comment do not include a requirement that an individual publicly state his or her home address before speaking at public meetings. At the

¹⁴Village of Lemont, Illinois, Municipal Code ch. 2, § 2.08.060 (2011).

¹⁵Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

¹⁶Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

April 14, 2014, meeting, however, the Mayor stated that those individuals wishing to speak should approach the podium and give their names and addresses. Further, the video recording shows that the Mayor specifically requested that Ms. Hughes state her address and repeated that request when she attempted to begin her public comments without first providing her address. The Mayor then asked the Village Attorney how to proceed, and he indicated that the Board should allow Ms. Hughes to speak without providing her address. After the Attorney's comments, however, Ms. Hughes went ahead and stated her address, then provided her comments.

While it is not clear that the Board would have continued to request her address after the Village Attorney responded to the Mayor's request for guidance, it does appear that the requests for her address had the effect of making Ms. Hughes feel that she needed to state her complete home address before she could provide public comments. Further, in its response to this office the Board described asking for home addresses of speakers as a "longstanding custom and practice" of the Village, "along with countless other public bodies."¹⁷ Even if the Mayor had allowed Ms. Hughes to address the Board without providing her complete home address in this instance, this scenario raises an important issue – whether requiring, either by "custom and practice" or by rule, that individuals provide home addresses before addressing a public body is consistent with OMA. Because it appears that many public bodies have such a requirement, clarification of the law in this area is warranted.

The Board notes that requiring individuals to state their addresses for the record prior to providing public comment allows for more accurate meeting minutes, permits the Board to determine whether the comments are raised by residents, and enables the Board to follow up on issues raised by members of the public. While the rules governing public comment under section 2.06(g) of OMA may assist in accurate recordkeeping, their primary purpose is to accommodate a speaker's statutory right to address the public body while ensuring that order and decorum are maintained at public meetings. *See Rana Enterprises, Inc.*, 630 F. Supp. 2d at 923-25. It is understandable that a public body would seek to make sure it is keeping accurate minutes, hearing from residents and other interested parties, and responding effectively to concerns raised at public meetings. Overall, in considering whether it is good policy to ask members of the public to provide their addresses when making public comments, there are reasonable arguments on both sides. Nothing prohibits a speaker from voluntarily providing his or her home address in response to the public body's request. However, the language of section 2.06(g) does not support a requirement that a person must provide his or her complete home

¹⁷Letter from Andrew S. Paine, Tressler LLP, to Timothy O'Brien, Assistant Attorney General, Public Access Bureau (June 30, 2014), at 2.

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address prior to being allowed to make a public comment. Section 2.06(g) specifically provides that "[a]ny person shall be permitted an opportunity to address public officials[.]" (emphasis added) therefore a person's right to comment at an open meeting is not contingent upon where he or she resides. In this case, the Board violated section 2.06(g) of OMA by placing a condition on the making of a public comment that is not part of its established and recorded rules. But, even if the Board had established and recorded a rule requiring speakers to provide their home addresses prior to speaking, we would conclude that such a rule would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g). Requiring a member of the public to provide his or her complete home address prior to speaking may have a chilling effect on individuals who wish to speak at public meetings. Therefore, we conclude that requiring speakers to state their home addresses prior to addressing public bodies violates section 2.06(g) of OMA, even if such a rule is established and recorded by the public body.¹⁸

FINDINGS AND CONCLUSIONS

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

1) On April 14, 2014, Ms. Janet Hughes attended an open meeting of the Lemont Village Board.

2) On June 6, 2014, Ms. Hughes submitted a Request for Review to the Public Access Counselor alleging that Village of Lemont officials "pressured" her to state her home address for the record prior to being permitted to provide public comment at an open Board meeting. Ms. Hughes' 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)).

3) The Attorney General properly extended the time to issue a binding opinion by 21 business days, to September 4, 2014, pursuant to section 3.5(e) of OMA. Therefore, the Attorney General may properly issue a binding opinion with respect to Ms. Hughes' Request for Review.

¹⁸The Board and Ms. Hughes disagree whether she had given her home address prior to public comment at previous meetings. Even if Ms. Hughes had previously stated her address at an open meeting in order to be allowed to speak, however, that disclosure would not waive her right to protest this practice or affect the invalidity of such a rule.

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4) 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."

5) Although the Board is authorized under section 2.06(g) of OMA to establish and record rules related to public comment, the Board did not establish or record a rule that a speaker must provide a home address prior to providing public comment.

6) Prior to the audience participation portion of the April 14, 2014, meeting, the Mayor directed that persons wishing to address the Board approach the podium and state their name and address for the record.

7) When Ms. Hughes attempted to address the Board without providing her exact home address, she was asked three more times to state her complete home address.

8) The Village Attorney advised the Mayor that Ms. Hughes should be allowed to address the Board without providing her complete home address. Ms. Hughes, however, did finally state her full home address before addressing the Board.

9) The Attorney General concludes that the Board violated section 2.06(g) of OMA when it stated that Ms. Hughes must provide her complete home address for the record before addressing the Board, although this requirement was not an established and recorded rule. Further, even if the Board had established and recorded such a rule, the rule would violate OMA because it is not reasonably related to promoting meeting order or decorum, or ensuring that other speakers have an opportunity to address the public body.

Therefore, it is the opinion of the Attorney General that the Lemont Village Board violated the Open Meetings Act when it tried to require Ms. Hughes to state her home address for the record prior to addressing the Board. 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 conducting its future meetings in full compliance with OMA.


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

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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 Ms. Janet Hughes as defendants. *See* 5 ILCS 120/7.5 (West 2012).

Very truly yours,

LISA MADIGAN
ATTORNEY GENERAL

By: 
Michael J. Luke
Counsel to the Attorney General