



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 1, 2019

PUBLIC ACCESS OPINION 19-009
(Request for Review 2019 PAC 59187)

OPEN MEETINGS ACT:
Right to Address Public Officials
at a Public Meeting

Ms. Shari Thurman
21349 Beardstown Road
Rushville, Illinois 62681

The Honorable Stacey Briney
City Clerk/CMC
City of Rushville
111 East Washington
Rushville, Illinois 62681

Dear Ms. Thurman and Ms. Briney:

This binding opinion is issued pursuant to section 3.5(e) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(e) (West 2018)). For the reasons discussed below, this office concludes that the City Council (Council) of the City of Rushville (City) violated OMA during its July 1, 2019, meeting by prohibiting a member of the public from addressing the Council during the public comment portion of the meeting.

BACKGROUND

In a letter dated August 1, 2019, that was e-mailed to and received by the Public Access Bureau on August 2, 2019, Ms. Shari Thurman submitted a Request for Review alleging that the Council violated OMA by prohibiting her from speaking during the public comment portion of its July 1, 2019, meeting.¹ Ms. Thurman alleged that she stood up to speak when the Mayor asked if there were any other comments and noted her desire to address the Council, but

¹Letter from Shari Thurman to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 1, 2019).

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the Mayor refused to yield the floor to her, and instead responded "no ma'am, I listened to you for two months and you have no standing to be here, you don't live in this town, you don't vote in this town and you have no reason to be here. I have heard two months of it and I'm not hearing anymore!"² Ms. Thurman further stated that she asked the Council members if the Mayor could do that, and while the Council members discussed the issue, she sat down. A Council member told her that the Council would "ask for legal [counsel] to see if the Mayor can do this."³

On August 7, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the City Clerk, Ms. Stacey Briney, together with a letter asking the Council to respond to the allegation in the Request for Review.⁴ In particular, the Public Access Bureau asked the Council to address: (1) whether the Council heard public comment at its July 1, 2019, meeting; and (2) whether Ms. Thurman was prohibited from speaking at the meeting.⁵ In addition, this office asked the Council whether it had established and recorded rules governing public comment, and, if so, to provide copies of the rules, as well as copies of the agenda, minutes, and recordings, if any, of the July 1, 2019, meeting.⁶

On August 12, 2019, Ms. Briney provided a written answer on behalf of the Council and copies of the July 1, 2019, meeting agenda and a certified copy of the minutes.⁷ The answer stated that "[t]he regular meetings are not recorded, either audio or video, by the City Clerk or any alderman."⁸ On August 15, 2019, the Public Access Bureau forwarded a copy of the Council's answer to Ms. Thurman.⁹ Ms. Thurman did not provide a written reply. On

²Letter from Shari Thurman to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 1, 2019). Although Ms. Thurman's letter to this office contained a Rushville mailing address, she did not dispute the Mayor's assertion that she does not reside within the City's corporate boundaries.

³Letter from Shari Thurman to Sarah Pratt, Public Access Counselor, Office of the Attorney General (August 1, 2019).

⁴Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Stacey Briney, City Clerk, City of Rushville (August 7, 2019).

⁵Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Stacey Briney, City Clerk, City of Rushville (August 7, 2019), at 1.

⁶Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Stacey Briney, City Clerk, City of Rushville (August 7, 2019), at 1.

⁷Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 12, 2019).

⁸Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 12, 2019).

⁹Letter from Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General, to Shari Thurman (August 15, 2019).

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August 15, 2019, the Public Access Bureau received a flash drive from Ms. Thurman containing a video recording of the July 1, 2019, meeting.¹⁰ Ms. Thurman did not identify the source of the recording.

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 2018). Section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018)) 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 Council's answer to this office stated that it "has adopted Roberts Rules of Order. *Public Comment* appears on every council agenda and the rule is a person is limited to five (5) minutes with a maximum of thirty (30) minutes per topic."¹¹ (Emphasis in original.) Other than the agenda item for "Public Comments" that appears on the July 1, 2019, Council meeting agenda,¹² the Council did not provide this office with a copy of its rules for public comment, or any evidence indicating that it has established and recorded such a rule.¹³ Further, the information provided by the Council does not indicate whether the version of *Robert's Rules of Order* that it has adopted addresses public comment or requires a member of the public to reside within the City's corporate boundaries in order to authorize him or her to speak at public meetings of the Council.

To answer the allegations in this Request for Review, the Council simply referenced the portion of the July 1, 2019, meeting minutes in which Ms. Thurman's request to participate in public comment was discussed. The minutes provide:

¹⁰Letter from Shari Thurman to Matt Hartman, Assistant Attorney General, Public Access Bureau, Office of the Attorney General (August 13, 2019). Because the flash drive was not provided to the Council and because the underlying facts of this matter are not disputed, this office need not consider this recording in reaching its conclusions in this matter.

¹¹Letter from Stacey L. Briney, City Clerk/CMC, City of Rushville, to Assistant Attorney General Matt Hartman (August 12, 2019).

¹²"Public Comments – (limited to 5 minutes per person – 30 minutes per topic)[.]" (Emphasis in original). Rushville City Council Agenda, Agenda Item 3 (July 1, 2019).

¹³"The plain 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." Ill. Att'y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019, at 5-6 (concluding that a public body violated OMA by enforcing a 15 minute time limit on public comment when it had not established such a rule).

Shari Thurman stated that she had a comment and Mayor Klitz told her that he was not going to let her speak because she does not live in town and cannot vote. Mayor Klitz informed Thurman that she had no standing to be here at the meeting. Council Member, Larry Wilson said he would like to hear what Thurman has to say, and Mayor Klitz told Wilson that he can go out to the hallway and talk to her. Wilson noted Mayor Klitz could leave the room so the council could hear what Thurman had to say. Wilson stressed to Mayor Klitz that his job was to administrate and the council was to legislate. Mayor Klitz told Wilson to not point his finger at him and tell him what his job was. Mayor Klitz stressed that the bottom line was that he was not listening to this woman speak. Council Member, Scott Stoll asked Mayor Klitz if that was his choice, and Mayor Klitz responded that it was his choice. Council Member, Kent Cox recommended asking legal council [*sic*] about this to see what they say. Thurman noted she appreciated that.^[14]

The facts of this Request for Review are not disputed. Ms. Thurman's allegation that she was not allowed to address the Council at its July 1, 2019, meeting because she does not live in the City are corroborated by the certified meeting minutes provided by the Council. Although the Mayor made the comments to Ms. Thurman that she would not be allowed to speak and Council members appeared to disagree with that decision, the fact remains that Ms. Thurman was not permitted to address the Council members during the public comment period of an open meeting or at any other point during the meeting.

Section 1 of OMA (5 ILCS 120/1 (West 2018)) declares the public policy of the State to be that "its citizens" be given advance notice and the right to attend all meetings of public bodies. Similarly, the plain language of section 2.06(g) requires that all public bodies subject to the Act provide an opportunity for "[a]ny person" to address public officials at open meetings, subject to "the rules established and recorded by the public body." OMA does not define the term "person," however, section 1.05 of the Statute on Statutes (5 ILCS 70/1.05 (West 2018)) states that the term "person" applies "to bodies politic and corporate as well as individuals." Black's Law Dictionary defines a "person" as "[a] human being." Black's Law Dictionary (11th ed. 2019), *available at* Westlaw BLACKS. Thus, an individual is a "person" for purposes of OMA no matter where he or she resides. If the General Assembly had intended to limit the public's right to address public officials to only those officials sitting on public bodies in the communities of residence of the members of the public who wish to speak, it could have done so expressly. It did not. Accordingly, OMA does not limit the right to address public officials to individuals who live within the corporate boundaries of a particular public body.

¹⁴Rushville City Council, Meeting, July 1, 2019, Minutes 1.

In addition, limiting public comment to City residents is not part of the Council's public comment rules. Because the City did not provide a copy of its rules, it is not clear that the Council has any "established and recorded" rules governing public comment. More importantly, even if the Council had an established and recorded rule limiting public comment to the residents of the City, such a rule would impermissibly exceed the scope of the rulemaking contemplated by section 2.06(g).¹⁵ 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" that 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 such as maintaining order and decorum at meetings, and must tend to accommodate, rather than to unreasonably restrict, the right to address public officials. *See, e.g., 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)).

Finally, this office has stated that "a person's right to comment at an open meeting is not contingent upon where he or she resides." *Ill. Att'y Gen. Pub. Acc. Op. No. 14-009*, issued September 4, 2014, at 7 (concluding that a public body violated OMA by making the speaker feel that she was required to publicly state her home address before addressing the public body). Indeed, the actions of a public body may have a substantial, and in some instances, greater impact on the residents of surrounding areas than on those residing within the public body's corporate boundaries. Accordingly, the Council violated section 2.06(g) of OMA by improperly prohibiting Ms. Thurman from addressing the Council during its July 1, 2019, meeting.

FINDINGS AND CONCLUSIONS

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

- 1) On July 1, 2019, Ms. Shari Thurman attended the regular meeting of the City Council of the City of Rushville.
- 2) In a letter dated August 1, 2019, and e-mailed to the Public Access Bureau on August 2, 2019, Ms. Thurman submitted a Request for Review to the Public Access Counselor

¹⁵A review of the Illinois Municipal Code (65 ILCS 5/1-1-1 (West 2018)) indicates that while a city council is authorized to determine its own procedural rules, the Code does not provide guidance on the standards that should be satisfied by the procedural rules so adopted. *See generally* 65 ILCS 5/3.1-40-15 (West 2018).

alleging that the Council prohibited her from speaking during the public comment portion of its July 1, 2019, meeting because she did not reside in the City. Ms. Thurman'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 2018)). Therefore, the Attorney General may properly issue a binding opinion with respect to this matter.

3) On August 7, 2019, the Public Access Bureau forwarded a copy of the Request for Review to the City Clerk and asked the Council to provide a detailed written response to the allegations raised by Ms. Thurman's Request for Review. The Public Access Bureau also requested a copy of any Council rules governing public comment, along with copies of the agenda, minutes, and recording, if any, of the July 1, 2019, meeting.

4) On August 12, 2019, City Clerk Stacey L. Briney provided a written answer to the Public Access Bureau on behalf of the Council. The answer included copies of the agenda and minutes of the meeting. The Council did not provide this office with a copy of its rules governing public comment, but the answer stated that the Council had adopted Roberts Rules of Order. A review of the Council's meeting agendas indicates that the Council routinely lists public comment as an agenda item with a notation that the comments are "limited to 5 minutes per person - 30 minutes per topic[.]"

5) On August 15, 2019, the Public Access Bureau sent a copy of the Council's answer to Ms. Thurman; she did not reply.

6) 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."

7) The Council acknowledged that during its July 1, 2019, meeting, Ms. Thurman was prohibited from speaking because she did not reside within the City, despite the protests of multiple members of the Council who requested that the Mayor allow Ms. Thurman to address the Council.

8) Although the Council is authorized under section 2.06(g) of OMA to establish and record rules relating to public comment, the Council did not provide this office with any evidence that it had established and recorded a rule that a speaker must reside in the City of Rushville to provide public comment.

9) Even if the Council had an established and recorded a rule limiting public comment to City residents, such a rule would violate section 2.06(g) of OMA.

Therefore, it is the opinion of the Attorney General that the City Council of the City of Rushville violated section 2.06(g) of the Open Meetings Act when it prohibited an individual from addressing the Council on the grounds that the individual was not a resident of the City. In accordance with these findings of fact and conclusions of law, the Council is

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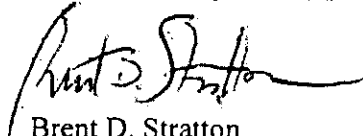
directed to take appropriate action to comply with this opinion by refraining from applying unestablished and unrecorded rules to restrict public comment at future meetings. In particular, the Council is directed to refrain from limiting public comment to City residents.

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 2018). 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 Shari Thurman as defendants. *See* 5 ILCS 120/7.5 (West 2018).

Sincerely,

KWAME RAOUL
ATTORNEY GENERAL

By:



Brent D. Stratton
Chief Deputy 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 19-009) upon:

Ms. Shari Thurman
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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 October 1, 2019.


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Public Access Counselor

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