

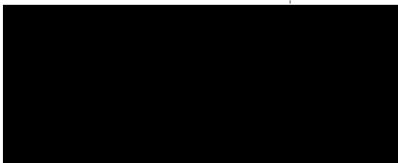


OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL

October 26, 2020

Via electronic mail



RE: OMA Request for Review – 2020 PAC 64702

Dear [REDACTED]:

This determination is issued pursuant to section 3.5(b) of the Open Meetings Act (OMA) (5 ILCS 120/3.5(b) (West 2018)). For the reasons set forth below, the Public Access Bureau concludes that no further action is warranted in this matter.

On September 9, 2020, this office received your Request for Review alleging that the Piatt County Board (Board) violated OMA, section 8-701 of the Code of Civil Procedure (735 ILCS 5/8-701 (West 2018)),¹ and your civil rights when it did not prevent members of the public from recording its September 9, 2020, regular meeting. Specifically, you alleged that the Board did not stop the Edgar County Watchdogs from videotaping the meeting and members of the public present at the meeting, and broadcasting the meeting. You stated that you chose not to speak during the meeting because you were "intimidated by the cameras" and "did not want to be filmed and broadcast on [F]acebook[.]"² In an addendum, you described a physical altercation with one of the "Watchdogs" when you sought to block him from filming, and you asked whether the "Watchdogs" were allowed to film you before the meeting, film the audience during the meeting, and post videos or images of faces of members of the public online.

Section 3.5(a) of OMA (5 ILCS 120/3.5(a) (West 2018)) sets forth the requirements for filing a Request for Review of an alleged OMA violation as follows:

¹This section provides that "[n]o witness shall be compelled to testify in any proceeding conducted by a commission, administrative agency or other tribunal in this State if any portion of his or her testimony is to be broadcast or televised or if motion pictures are to be taken of him or her while he or she is testifying."

²E-mail from [REDACTED] to Public Access Counselor (September 9, 2020).

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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. * * * The request for review * * * must include a summary of the **facts supporting the allegation**. (Emphasis added.)

The Public Access Counselor's authority to resolve disputes is limited to alleged violations of OMA and the Freedom of Information Act (5 ILCS 140/1 *et seq.* (West 2018)). *See* 15 ILCS 205/7(c)(3) (West 2018). Therefore, this office is not authorized to review alleged violations of civil rights. Additionally, this office notes that OMA does not specifically address filming before a meeting, filming the audience during a meeting, or the internet posting of images or videos of open meetings taken by members of the public.

OMA does, however, specifically provide that anyone may record an open meeting. Section 2.05 of OMA (5 ILCS 120/2.05) (West 2018)) provides:

Subject to the provisions of Section 8-701 of the Code of Civil Procedure, any person may record the proceedings at meetings required to be open by this Act by tape, film or other means. The authority holding the meeting shall prescribe reasonable rules to govern the right to make such recordings.

If a witness at any meeting required to be open by this Act which is conducted by a commission, administrative agency or other tribunal, refuses to testify on the grounds that he may not be compelled to testify if any portion of his testimony is to be broadcast or televised or if motion pictures are to be taken of him while he is testifying, the authority holding the meeting shall prohibit such recording during the testimony of the witness. Nothing in this Section shall be construed to extend the right to refuse to testify at any meeting not subject to the provisions of Section 8-701 of the Code of Civil Procedure.

Under the plain language of this provision, any member of the public may videotape an open meeting, subject to reasonable rules prescribed by the public body. The authority holding the meeting may only prohibit recording in the limited circumstance where a witness who is compelled to "testify" at a commission, administrative agency, or other tribunal objects to being recorded. In construing a statutory provision, the primary goal is to ascertain and effectuate the intent of the General Assembly. *See, for example, Southern Illinoisan v. Illinois Department of Public Health*, 218 Ill. 2d 390, 415, 844 N.E.2d 1, 14 (2006). The best

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indicator of legislative intent is the language of the statute, which must be given its plain and ordinary meaning. See, e.g., *Citizens Opposing Pollution v. ExxonMobil Coal U.S.A.*, 2012 IL 111286, ¶23, 962 N.E.2d 956, 964 (2012). Black's Law Dictionary defines "testify" "[t]o give evidence as a witness" or "to bear witness[.]" Black's Law Dictionary (11th ed. 2019) available at Westlaw BLACKS. You were not compelled to testify as a witness at the September 9, 2020, meeting, nor was that Board meeting a trial, evidentiary hearing, or other proceeding subject to the Code of Civil Procedure. Rather, you were a member of the public seeking to address your opinion to the Board pursuant to section 2.06(g) of OMA (5 ILCS 120/2.06(g) (West 2018))³ Accordingly, the limitation on recording in section 8-701 of the Code of Civil Procedure was not available in these circumstances.

This office does not condone aggressive behavior by persons filming such as you allege and understands that some persons may be discouraged from addressing the Board because of being filmed and the recording being posted online. Nonetheless, because OMA specifically provides that any person may record the proceedings at open meetings, your complaint that the Board allowed the recording to continue does not allege a violation of OMA. Therefore, no further action is warranted in this matter. If you have any questions, you may contact me at clucentemccullough@atg.state.il.us or (312) 814-5383.

Very truly yours,

CHRISTINA M. LUCENTE-MCCULLOUGH
Assistant Attorney General
Public Access Bureau

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cc: Ms. Keri Nusbaum
Secretary/Freedom of Information Officer
Piatt County Board
101 West Washington Street, Courthouse Room 107
Monticello, Illinois 61856

³Section 2.06(g) of OMA provides that "[a]ny person shall be permitted an opportunity to address public officials under the rules established by the public body."