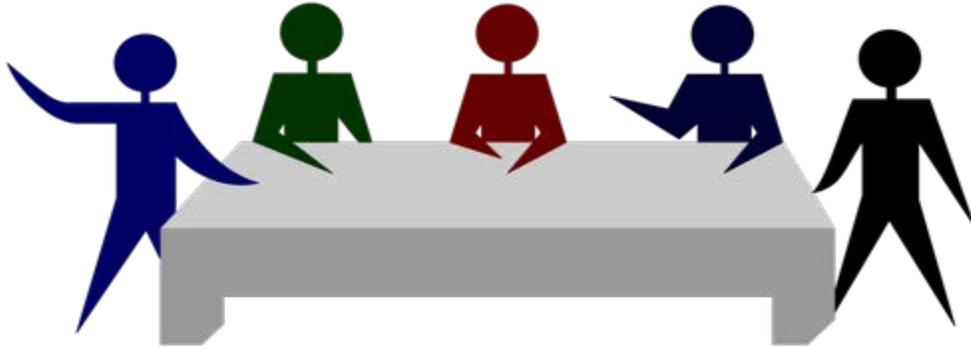


PUBLIC COMMENT IN TOWNSHIP GOVERNMENT



TOWNSHIP OFFICIALS OF ILLINOIS 2019 ANNUAL CONFERENCE

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*Concentrating in Township Law &
Assisting Townships Throughout the State of Illinois*

Board Practices & Procedures ◇ Labor & Employment Issues ◇ Freedom of Information Act ◇ Open Meetings Act ◇ Records Retention ◇ Real Estate & Property Issues ◇ Construction of Township Buildings ◇ Litigation ◇ Elections & Objections ◇ Budget & Tax Levy Issues ◇ Cemetery Issues ◇ Road District Issues

Jeffrey R. Jurgens

Jeffrey R. Jurgens is currently a partner with Sorling Northrup after first joining the firm in 2000. In 2006, he began working with the Chicago-based law firm of Ancel, Glink, Diamond, Bush, DiCianni and Krafthefer, P.C., wherein he concentrated in working with units of local government. In 2011, he returned to Sorling as a partner to continue his practice in local government law.

He received his undergraduate degree in Political Science from Illinois State University and his juris doctor degree from the American University Washington College of Law. While attending law school, Mr. Jurgens worked in the White House Counsel's Office and with numerous other federal agencies. Prior to attending law school, Mr. Jurgens interned on former Governor Jim Edgar's policy staff and worked in the Illinois General Assembly for legislators in both the State House of Representatives and the State Senate. This legislative background often provides an added benefit to his diverse client base.

Mr. Jurgens has spent a large part of his legal career representing units of local government, including townships, municipalities, and park districts. He advises these bodies on issues that arise on a daily basis, including matters involving board practices and procedures, real estate, zoning and statutory compliance. He is also well versed in matters involving the Freedom of Information Act and the Open Meetings Act and has taught numerous seminars and authored several publications on those laws.

In addition to working with units of local government, Mr. Jurgens concentrates his practice in election law, general litigation, and administrative review law. He has been admitted to practice law before the Seventh Circuit Court of Appeals, the Northern District of Illinois, the Central District of Illinois, and the Supreme Court of the State of Illinois. Mr. Jurgens is a member of the Illinois State Bar Association and was named by Super Lawyers Magazine as an Illinois Rising Star in 2010 and a Leading Lawyer in 2018. Mr. Jurgens also received the Township Officials of Illinois President's Award in 2014.

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United States District Court for the Central District of Illinois
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Elections, Political & Campaign Law

Public Comment Legal Outline

I. ILLINOIS OPEN MEETINGS ACT

- A. **5 ILCS 120/2.06(g)**: “Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body.”
- B. The Open Meetings Act does not specify the rules on public comment that a public body may adopt. However, courts have clarified that public bodies may enforce reasonable “time, place, and manner” restrictions that are narrowly tailored and necessary to further a significant governmental interest. *See I.A. Rana Enterprises, Inc. v. City of Aurora*, 630 F. Supp. 2d 912, 922 (N.D. Ill. 2009). The rules that govern public comment, that have been allowed, are in order to maintain decorum, ensure the meetings are conducted efficiently, and, in general, tend to accommodate, rather than unreasonably restrict the public’s right to address public officials. *See id.* at 459; *see also* Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, at 4.

II. ATTORNEY GENERAL OPINIONS – PUBLIC ACCESS COUNSELOR

- A. Who is the Public Access Counselor (PAC)?
 - (i) The PAC is an attorney in the Illinois Attorney General’s Office who works to ensure compliance with the Open Meetings Act (OMA).
 - (ii) The duties of the PAC include:
 - a. Authority to determine whether a public body has violated OMA;
 - b. Authority to issue advisory opinions to guide public bodies;
 - c. Work to resolve or mediate disputes between members of the public and public bodies over OMA;
 - d. May issue both non-binding and binding opinions in OMA disputes; and
 - e. May sue to enforce binding opinions.
- B. Request for Review – Informal Mediation
 - (i) **Ill. Att’y Gen. PAC Req. Rev. Ltr. 21593, issued July 17, 2014**
 - a. A member of the public submitted a Request for Review alleging that the Rock Island County Board’s rules regarding public comment violated the requirements of OMA. The PAC determined that the rule in question, which required residents to sign up for public comment at least two working days in advance of the meeting, violated OMA by discouraging rather than promoting public participation. The County Board complied with this determination by amending its public comment rules to be less restrictive.

C. Binding Opinions

(i) **Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, issued Sept. 4, 2014**

- a. Concluded that the Village of Lemont violated section 2.06(g) of OMA by requiring a resident to state her complete home address for the record before being permitted to address the Board, although that requirement was not an established and recorded rule. Further, even if the Board had established and recorded such a rule, the rule would violate section 2.06(g) of 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.

(ii) **Ill. Att’y Gen. Pub. Acc. Op. No. 14-012, issued Sept. 30, 2014**

- a. Found that McLean County’s rule requiring a person who wanted to address the board during the public comment portion of a meeting to send a written request to the county five working days prior to the meeting violated OMA. **Rules limiting public comment must be reasonably calculated to further a significant governmental interest, such as promoting meeting order or decorum or ensuring that all interested persons have the opportunity to address the public body.**

(iii) **Ill. Att’y Gen. Pub. Acc. Op. No. 19-002, issued January 9, 2019**

- a. Found that the Lyons Elementary School District violated the OMA by enforcing an unestablished and unrecorded rule limiting the public comment portion of the meeting to 15 minutes.

D. Non-Binding Opinions

(i) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 34760 & 34766, issued Oct. 8, 2015**

- a. The Adams County Board required members of the public wishing to speak at the Board meeting to **submit a request to the Board Chairman seven days before the meeting**. Prior to the PAC issuing a determination in this matter, the Board amended its rules governing public comment to require members of the public to submit a request to address the Board no later than 4:00 p.m. on the day before the meeting. The PAC did conclude that the Board violated section 2.06(g) of OMA by requiring members of the public to submit a written request to the Board Chairman seven days before the meeting.

(ii) **Ill. Att’y Gen. PAC. Req. Rev. Ltr. 37391, issued Jan. 11, 2016**

- a. The Village of Cahokia Board of Trustees refused to allow a member of the public to speak during the designated public comment period because she had not filled out and submitted a **form requesting detailed information** seven hours in advance of the meeting, in accordance with the Board's rules. After the PAC issued a determination in this matter concluding that the Board violated

section 2.06(g) of OMA by enforcing an unreasonable rule to infringe on the woman's statutory right to address the Board, the Board changed its rules for public comment so that it no longer requires those who wish to speak at a meeting to obtain a specific form from the Clerk's Office.

(iii) **Ill. Att'y Gen. PAC. Req. Rev. Ltr., 37503, issued April 8, 2016**

- a. The Crete-Monee School District 201- The Board of Education violated the OMA by repeatedly interrupting a member of the public while she was addressing the board. Additionally, the PAC determined that the Board's requirement that in order to speak at a meeting, a member of the public must first submit a form to the Board's corresponding secretary that identifies the topic of his or her public comment, and requires the speaker to submit his or her email address and address on the form before addressing the Board. The PAC issued a determination in this matter concluding that the **Board's requirements may create a chilling effect on speech at public meetings, and that requiring speakers to furnish physical and email addresses does not advance any significant public interest and other means exist to accomplish the goal of running a timely and orderly meeting in a much less restrictive manner.**

(iv) **Ill. Att'y Gen. PAC. Req. Rev. Ltr., 37996 & 38037, issued Aug. 1, 2016**

- a. The City of Carrollton refused to allow public comments from attendees who were not City residents. Additionally, the City did not have established and recorded rules concerning public comment at Council meetings. PAC determined that **"a public body that does not have established and recorded rules governing public comment violates OMA when it denies a member of the public the opportunity to address public officials at an open meeting."** The City also had not placed public comment on the agenda. The Public Access Bureau previously determined that section 2.06(g) of OMA does not require a public body to list public comment on a meeting agenda in order for members of the public to be able to address the members of the public body during the meeting. *See* Ill. Att'y Gen. PAC Req. Ltr. 26020, issued April 14, 2014, at 2. **A rule limiting participants to speaking only on subjects listed on the agenda would exceed the scope of permissible rulemaking authorized by section 2.06(g).** The Council claimed they prohibited comments to City residents because non-residents had been disruptive at prior meetings. However, the Council provided no evidence and therefore they did not establish that it was necessary or even reasonable to categorically prohibit all non-residents from commenting. Additionally, no rule prohibiting comments by non-residents was in place and if such a rule was in place, PAC would

have concluded that such a blanket prohibition would impermissibly restrict the right to public comment guaranteed by section 2.06(g).

(v) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 39069 & 39416, issued April 5, 2016 & June 2, 2016.**

- a. The Waukegan City Council rules restricted the right of members of the public to address public officials at public meetings by restricting comments to those that are not personal attacks against others or rude or slanderous remarks. PAC determined that “rude or slanderous remarks” and “personal attacks against others” are susceptible to being overbroad and arbitrary. In addition, what constitutes this type of **speech is entirely subjective and/or a legal judgment that is not defined by the Council.** “The Council’s rules are devoid of any criteria for determining when a comment is improper, thus vesting the presiding officer with unbridled discretion to limit or prohibit legitimate public criticism[.]” PAC concluded that the rules of the Council exceeded the permissible scope of section 2.06(g). PAC recommended that the Council review its rules governing public comment to ensure they are appropriately and narrowly tailored to regulate only those governmental interests relating to decorum and efficiency.

(vi) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 40718 & 41083, issued Jan. 9, 2017 & Mar. 22, 2017**

- a. The Fairbury City Council violated OMA’s public comment provision by not allowing public comment on items that were not listed on meeting agenda. PAC determined that the City Council’s argument that its public comment ordinance “allow[s] the public to comment while maintaining the proper decorum for a council meeting” is conclusory as it does not explain why restricting the subject matter of public comment is necessary to maintain “proper decorum.”

(vii) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 44262, issued Dec. 12, 2016**

- a. The Kankakee School District 111 Board of Education violated the requirements of OMA by imposing a restriction on public comment that was not authorized by its established and recorded rules. During a Board meeting, the Board president added a requirement that commenters “cannot speak of personnel issues.” **PAC determined that there was no evidence that the Board had established and recorded a rule restricting public comment on personnel matters.** PAC cautioned the Board to be mindful in the future to limit restrictions on public comment to reasonable rules that it has established and recorded.

(viii) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 45349**

- a. The Town of Normal impermissibly restricted the rights of members of the public to address public officials by enforcing a rule that **members were prohibited from addressing the Council more often than once every forty-five days**. PAC stated that “[i]f public bodies have unlimited discretion to impose restrictive rules under section 2.06(g) of OMA, the right to address public officials articulated by that provision would be no right at all.” PAC determined the 45-day rule exceeded the permissible scope of rulemaking authorized by section 2.06(g). PAC also reaffirmed the binding opinion that requiring speakers to state their home address prior to addressing public bodies violates section 2.06(g). *See* Ill. Att’y Gen. Pub. Acc. Op. No. 14-009, issued Sept. 4, 2014, at 7.

(ix) **Ill. Att’y Gen. PAC. Req. Rev. Ltr., 45844**

- a. The Lemont Township High School District 210 Board of Education violated the requirements of OMA by imposing a restriction on public comment that was not authorized by its established and recorded rules. The Board president interrupted a commenter when the commenter began reading verbatim language from a novel out loud during her allotted time and the Board asserted that the president prevented the reading pursuant to its established and recorded rules. The Board had established a rule allowing the president to decide on procedural matters regarding public participation. **PAC determined that requiring a citizen to make a comment as opposed to reading a passage from a novel could be construed to be a procedural rule; however, in this situation it appeared to be directly related to what the Board’s president believed would be the content of the comments and thus a violation of section 2.06(g).**

III. COURT CASES

(i) **Roxana Community Unit School District No. 1 v. Environmental Protection Agency, 2013 IL App (4th) 120825 (Ill. App. Ct. 4th 2013).**

- a. The court found that the Defendant agency violated Section 2.06(g) by denying plaintiffs’ request to address the Board in an open meeting. In this case, the Board admitted it prohibited public comment in violation of section 2.06(g) of OMA. “Here, the Board’s rules restricted the opportunity to address [the] public body to written filings. [And] [a]fter plaintiffs filed numerous petitions to intervene, the Board discussed the merits of plaintiffs’ claims—without providing any avenue for elaboration—in closed sessions. The Board then announced its denial of plaintiffs’ petitions in an open meeting.” *Id.* at ¶¶57-58.

- (ii) **I.A. Rana Enters. City of Aurora, 630 F. Supp. 2d 912 (N.D. Ill. 2009).**
- a. The court held that public bodies may enact reasonable “time, place, and manner” restrictions that are narrowly tailored and necessary to further a significant government interest. *Id.* at 922. “These rules must tend to accommodate, rather than to unreasonably restrict, the right to address public officials.” Ill. Att’y Gen. PAC. Req. Rev. Ltr., 37503, issued April 8, 2016, at 2.

IV. WHAT TOWNSHIPS SHOULD AVOID IN RELATION TO PUBLIC COMMENT

- A. Changing rules during the meeting.
- B. Requiring commenters to give address prior to speaking.
- C. Advance sign-up prior to meeting (at least unreasonable periods).
- D. Detailed forms requiring speaker to state what they will be commenting about.
- E. Continuing to interrupt speaker outside of established rules.
- F. Restricting comments to citizens.
- G. Limiting comments to agenda items.
- H. Overbroad and arbitrary rules.
- I. Waiting periods between speaking at meetings.
- J. Restrictions on content that do not impact decorum or promote meeting order.
- K. Not allowing public comment and not having any established rules

V. WHEN IS A SPEAKER OUT OF ORDER?

- A. Disorderly conduct and/or disrupting a meeting is a general rule of thumb.
- B. Criticism and complaints are usually part of public comment and is permissible.
- C. Be careful not to violate First Amendment Rights!

DISCLAIMER: The information contained herein is provided to the Township Officials of IL for a presentation on public comment. It is intended to provide timely general information of interest but should not be considered a substitute for legal advice.

**PUBLIC COMMENT IN
TOWNSHIP GOVERNMENT &
HOW TO HANDLE IT**

TOWNSHIP OFFICIALS OF ILLINOIS
2019 ANNUAL CONFERENCE

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**PUBLIC COMMENT
ILLINOIS OPEN MEETINGS ACT**

- Any person shall be permitted an opportunity to address public officials under the rules established and recorded by the public body. 5 ILCS 120/2.06(h).



PUBLIC COMMENT



**PUBLIC COMMENT
ILLINOIS OPEN MEETINGS ACT**

- Rules?
 - Time limitations
 - Topic limitations (items related to the municipality)
 - Location on the agenda
- Public Access
Counselor Opinions



**PUBLIC COMMENT
COMMON QUESTIONS & ISSUES: TIME LIMITS**

- Can we limit the time of each speaker?
- Can we limit the total time of public comment?



PUBLIC COMMENT



**PUBLIC COMMENT
COMMON QUESTIONS & ISSUES:
CONTENT ISSUES**

- Can we limit what is discussed in public comment?
- Can speakers swear?
- Can speakers “attack” me personally?



**PUBLIC COMMENT
COMMON QUESTIONS & ISSUES:
PROCESS**

- Can we require advance registration?
- Can speakers yield their time to other speakers?
- Where on the agenda should we place public comment?
- Do non-residents have a right to speak?



**PUBLIC COMMENT
COMMON QUESTIONS & ISSUES: RESPONSES**

- Do we have to answer questions or respond to public comment?



