

## **Open Meetings, Open Microphones**

By Lance M. Werner, Library Law Specialist

A few years ago a library trustee asked me, “how well should I [the trustee] know the Open Meetings Act” (OMA), 1976 PA 267, MCL 15.261 *et seq.* I responded, “extremely well”, which was probably an understatement. I should have said, “you should know it like the back of your hand”.

Library trustees should never become comfortable with the OMA, as comfort leads to complacency and complacency can lead to liability. I could write pages and pages on OMA, but for the sake of you readers and due to the limitations of space, I will limit my comments to the rights of the public to address governing boards of libraries at open meetings.

Under Michigan law, there is no doubt that the public has the right to address a library board during an open meeting. Sec. 3(5) of OMA, MCL 15.263 provides:

A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body.\*\*\*

In addition to possessing the right to address the board, attendees have fairly broad discretion to say what they want to say. Unfortunately, it is not unheard of for attendees to launch into personal attacks on a board member or an entire board. The fact is that the OMA permits these types of tirades as long as they relate to how library employees, directors and trustees perform their duties. As stated in the law, library boards should put policies in place on how the public is permitted to address the board in its open meetings. The “rules” should be in writing and be designed to minimize potential disruptions. They should clearly dictate how the public may address the board.

The board’s policies should cover, among other things: time limits for each individual addressing the board [AG Opin. No. 5332, p. 536, July 13, 1978]; when during the meeting the public may address the board; that people addressing the board must identify themselves [sec. 3(4). OMA prohibits requiring attendees to identify themselves as a *condition precedent to attending* a meeting. The negative implication of this section is that it is permissible to require people to identify themselves when they address the board.]; and where the public may set up recording equipment within the meeting room. A library board can adopt a rule against people making personal attacks that are not related to how an officer, employee or board member performs his or her duties. [AG Opin. No. 5332, p. 536, July 13, 1978].

Attendees cannot be excluded unless there is an actual “breach of the peace” that occurs during the meeting [sec. 3(6)]. The phrase “breach of the peace” is not defined in the OMA. However, Attorney General Frank J. Kelley has defined it for the purposes of the OMA. In Opinion No. 5614 he relied on the definitions given to “breach of the peace” that had been used by Michigan courts. [AG Opin. No. 5416 p. 519, December 21, 1979]. He stated:

In *People v Johnson*, 86 Mich 175, 177; 48 NW 870 (1898), the Court defined a breach of peace to be:

. . . a violation of public order, a disturbance of the public tranquility, by any act or conduct inciting to violence, or tending to provoke or excite others to break the peace. . . .

In *Johnson*, the Court approved the following instruction given to the jury by the circuit judge:

To be intoxicated and yelling on the public streets of a village, in such a manner as to disturb the good order and tranquility of that village, would be an act of open violence, and would be a breach of the peace, . . .

Based on this definition, it seems that coarse language by itself would not constitute a “breach of the peace”, but coarse language coupled with public inebriation might. It will be important to discuss this issue with your legal counsel.

It is also worth noting that under OMA, attendees have a right to record the board’s public proceedings [sec. 3(1)]. Although the public has a right to attend an open meeting where an interview is being conducted, the members of the audience do not have the right to ask questions of candidates. [AG Opin. No. 6019, p. 507, December 29, 1981].

A library board’s policies on public comments at board meetings should be prepared in clear and concise language. They should be articulated in such a way that a reasonable person could understand what is and is not allowed. It is also important that the library’s policies on how the public may comment at board meetings are drafted in a manner consistent with the OMA. Copies of the policies should be made available to the public.

As I have indicated in previous articles, once policies have been developed it is sound practice to regularly revisit the library’s policies every few years. It is also a good idea to submit the library’s policies to the library’s attorney for review and comment.

Lastly, this article has been prepared strictly as an informational service of the Library of Michigan, Michigan Department of History, Arts and Libraries. It is not intended in any way to constitute legal advice. Please feel free to contact Lance M. Werner, the library law specialist at the Library of Michigan by phone at (517) 373-1299 or via e-mail at [wernerl@michigan.gov](mailto:wernerl@michigan.gov) for further information about this topic.