Coates' Canons Blog: Open Meetings and the Public's Right to Speak

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North Carolina's open meetings law creates a broad public right of access to meetings of public bodies by requiring notice of most kinds of meetings, and allowing anyone to attend them. Do those who attend have a guaranteed right to speak at these meetings? The answer is "no." The open meetings law itself does not create a right to be heard, only a right to attend. Other laws do, however, provide rights of public comment, subject to some limitations. This blog describes the extent to which the public has a right to be heard at local government meetings, and the limitations the unit is allowed to impose on those who wish to speak.

Mandatory Provisions for Public Input

Until fairly recently, local government boards were not required to allow any regular public input at public meetings. If a public body such as a city council wanted to receive comment, they could invite it, but they had no obligation to do so. In 2005, the General Assembly enacted laws for city, county, and school governing boards, requiring a public comment period at a regular meeting at least once a month. You can review Fleming Bell's **blog post about public comment periods** to learn more about this requirement. The scope of the right to comment is quite broad. As Fleming notes, the statute allows the governing board to establish rules about how long people may speak and how many may speak on a particular topic. The statute makes no mention of any authority to restrict the subjects about which people may speak. It seems to me that there might be implicit authority to limit comments to things that relate in some way to matters over which the unit of government has some authority, but there has been no judicial interpretation of these provisions to date.

Public hearings provide another opportunity for public input. As discussed in David Lawrence's **blog post on public hearings**, specific statutory requirements dictate when a local government must hold public hearings on particular subjects. (For those of you who have previously printed out the list, please note that it has been updated.) Public hearings comprise a more limited opportunity for public comment, in that speakers may be restricted to topics that relate to the subject of the public hearing. In addition, **G.S. 160A-81** and **G.S. 153A-349.5** provide general authority to regulate conduct at public hearings, again, relating to the number of people who speak, the length of time, and the authority to maintain order.

Optional Forums for Public Input

Many local government boards, on their own initiative, invite public comment on particular matters, or set aside time for general public comments or announcements, beyond what is required by statute. The scope of allowed comment in these settings is up to the board to determine. Except for required public hearings or public comment periods, a board meeting is not a public forum– that is, there is no automatic right for the public to address the board, and the board may legally complete its agenda without inviting participation from the public, staff, or anyone else. (Of course, members of the public have many opportunities to communicate in other ways – emailing, writing, holding up signs, wearing t-shirts.) If the board voluntarily invites public comment, the board has discretion in deciding what the scope of the comments may be. The board must be careful to avoid discriminating among speakers based on their viewpoint – a First Amendment free speech violation – but is free to limit comments based on viewpoint neutral considerations.

So for example, if a board opens the floor for staff reports or comments, a member of the public would not have a legal basis for insisting on a right to respond to or comment on those reports. And if the board allows comments from the public at every meeting (beyond what is required under the statute), it has discretion in delineating the types of input allowed. Limitations in the voluntary settings may extend beyond "time, place, and manner" to specifically allowed subjects, since

there is no statutory obligation to open up the forum, and the statutory provisions prescribing the limitations the board may impose do not apply. If the board does not create any restrictions when establishing voluntary comment periods, the public (and a court) will most likely assume that a broad forum for expression, similar to the mandatory comment period, has been created. This situation is much like the one created when the government creates a website or social media site, as discussed in this **blog post**, and the board must exercise great care to avoid viewpoint discrimination.

Appointed Boards and Quasi-Judicial Hearings

So far I've talked about meetings of local governing boards. What about meetings of appointed boards, committees, and other public bodies? As with elected boards, there is no automatic requirement for these groups to allow public input. Most local government appointed boards and committees are not statutorily mandated so any requirement for general or particular public input would exist only if the entity that establishes the board or committee requires it, or if the board or committee itself decides to allow it. So, for example, the city council may create a neighborhood safety committee and charge the committee with, among other tasks, conducting focus groups to obtain neighborhood input. On the other hand, the city's appearance commission might be charged with simply reviewing and making recommendations about development proposals, and would have no obligation to allow any public input. Similarly, planning boards, boards of adjustment, and other statutorily mandated boards may be required to allow specific or general public participation consistent with their statutory purposes or assigned tasks.

A public board that has quasi-judicial responsibilities may be required to hear evidence and allow interested parties to respond and cross-examine witnesses. It's important to understand, however, that quasi-judicial hearings are different from other types of public hearings. A quasi-judicial hearing has a narrow legal purpose, and requires application of a particular standard of law, receipt of competent evidence, and cross-examination of particular, qualified witnesses. As such, it is not really accurate to think of these as opportunities for public comment, as other types of public hearings are. Indeed, in some cases it would be inappropriate to allow general comment, as described in more detail in David Owens' blog posts here and here.

Responding to Public Comments

Finally, it is important to note that even when the law requires public bodies to allow public comment, there is no general requirement for the public body to respond, even when directly questioned by a member of the public.

Links

- canons.sog.unc.edu/?p=2459
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- www.ncga.state.nc.us/enactedlegislation/statutes/html/bysection/chapter_160a/gs_160a-81.html
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