
Coates' Canons Blog: Who Controls the Agenda?

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The word “agenda” derives from Latin, meaning “things to be done”. For local government boards, it is a tool for organizing and conducting meetings. This blog addresses frequently asked questions about agendas, including how they are developed, how they may be modified, and who, ultimately, has the legal authority to control them.

Does state law require the use of agendas?

No. The use of agendas is a common practice, but not one that is required by state law. It's hard to imagine, however, how meetings could be conducted without agendas or comparable orders of business. The state legislature uses a daily “calendar” as its agenda.

Does that mean there are no rules about what must be on the agenda or how it is created?

No. Even though no law mandates the use of agendas, when a board uses them, state law and parliamentary rules dictate who controls them and how they are implemented. Trey Allen incorporates the basic legal and parliamentary rules that govern the preparation and adoption of a board's agenda in Suggested Rules of Procedure for a City Council, (Part VI, page 25), and Suggested Rules of Procedure for the Board of County Commissioners, (Part VI, page 26).

Who has the legal authority to dictate what goes on the agenda?

The answer to this question is very clear: It is up to the governing board to set the agenda. In legal and practical terms, it's the board's agenda, and it's up to them to decide on the matters it wishes to take up in the meeting. The decision is that of the body, not the chair or any individual member. Unless a law or board policy provides otherwise, decisions about what goes on the agenda (or comes off it), and what is actually addressed in the meeting are made by the board by majority vote.

Who prepares the agenda?

The board has ultimate authority over the agenda, but it is quite common for boards to delegate the job of developing a proposed or draft agenda prior to the meeting. Practices vary widely, but common examples include delegation to the city or county clerk, to the manager, or to an agenda committee, which might consist of the manager, clerk, and mayor or board chair. Boards typically develop a process for soliciting items from staff and board members prior to the meeting. It's also common (and advisable) for the board's procedure to call for review and suggested revisions before the chair calls for a vote to approve the proposed agenda at the beginning of each meeting. This gives members another opportunity to request changes in the proposed agenda before it is finally adopted by the board.

May the clerk, mayor/chair, or agenda committee refuse to allow an individual board member's request to have an item included on the proposed agenda?

Yes, but the board can overrule that decision. As noted, the board majority controls the agenda. Where the board has delegated authority to prepare the proposed agenda (as described in the preceding answer) individual board members are sometimes frustrated that their items don't make it onto the agenda. A board member can, in effect, appeal this decision to the board itself when the agenda is reviewed for approval at the beginning of the meeting, or by making a motion later in the meeting. If a majority of the board agrees to add it, then it will be heard. If not, it won't. An individual board member does not have a right to dictate the agenda. Rules typically allow individual board members to be recognized for a point of personal privilege,

but this allows a member to express a personal matter and is not an avenue for adding issues for general discussion.

Can the board establish rules requiring a supermajority vote to place items on the agenda?

Yes, but the board is free to change those rules whenever it wants to, by simple majority vote. Some boards have adopted rules for adding things to the agenda, including a requirement for a 2/3 vote. This encourages members to use administrative agenda-setting process and promotes efficiency in the meeting. On the downside, however, it could disadvantage a board member whose ideas or initiatives are unpopular with the chair, staff, or board member colleagues. The value and use of this type of rule is for the board to determine by majority vote. Once adopted, the policy continues to be subject to the board's discretion to repeal or modify as it sees fit from time to time.

Is there anything that legally must be on the agenda?

There is no legal requirement to have an agenda, but if the board chooses to have one, there are at least two legal requirements that should be considered in its preparation.

Public Comment period. State law requires elected boards of cities, counties and local school units to include a public comment period at a regular meeting at least once a month. See Fleming Bell's blog post , for more about public comment periods. Based on this requirement, at least one regular monthly meeting agenda must include a period for public comment.

Matters at Special and Emergency Meetings. Two separate provisions in state law govern the process of calling "special meetings" – that is, meetings that are not on the regular meeting schedule. Statutes for cities and counties (G.S. 160A-71 and G.S. 153A-40) require that board members be given notice of the called meeting setting out the purpose of the meeting. The statutes specify that the board may take up only the matters indicated in the notice unless all the members are present and consent to the additional matters, or the non-present members have provided written waiver of their right to notice.

Similarly, the open meetings law requires notice to the public of special meetings, including the purpose of the meeting. (G.S.143-318.12(b)(2)) Although there are no North Carolina case decisions on this point, this provision is commonly interpreted to limit a board to consideration of those matters listed in the notice.

Taken together, these provisions suggest that the composition of the agenda for a special meeting should be limited to matters listed in the notices to board members and to the public. A board may be subject to a challenge if it expands beyond the stated purpose, either by amending the agenda or by simply straying into other topics without amending the agenda. Such a challenge is a more serious risk if action is taken, than if the straying involves only discussion.

The open meetings law also authorizes emergency meetings, and provides that only business connected with the emergency may be considered at these meetings.

Must the board complete its agenda before adjourning?

No. As with many other answers to questions about agendas, this is a function of the board's exclusive authority over the agenda. If the board decides to abandon (or modify to shorten) the agenda it may, in its sole discretion, do so. Boards may also recess meetings in order to complete the agenda on another day. Unfinished items may be taken up at the next meeting, but are not automatically included on the next meeting's agenda. The board may address this in its local rules, however, or by majority vote at the end of the meeting at which items are left unfinished (for example, by passing a motion to place all unfinished items on the agenda for the next meeting).

May the presiding officer unilaterally add and delete items, or adjourn the meeting prior to completion?

The presiding officer has no inherent power to control what is on the agenda. As noted earlier, that power rests with the board. Presiding officers typically manage the agenda as part of managing the meeting, adding and deleting items with the board's explicit or tacit approval. Occasionally, a presiding officer's unilateral actions may be in excess of his or her authority. Examples include refusing to add an item or gaveling a meeting to a close in the heat of a controversial exchange. The presiding officer's unilateral actions affecting the agenda will stand only if a majority of the board approves

(usually by inaction), but can be overruled by a vote of a majority if one or more members raise an objection.

What's a consent agenda?

A consent agenda is used for board approval of matters that do not require individual consideration or discussion. Matters are listed and voted on as a group, and the single vote constitutes legal action on each matter. The board has authority to vote this way. Any individual board member may request that the item be removed from the consent agenda for separate discussion and vote.

Individual agendas

A second definition of agenda is: "the underlying intentions or motives of a particular person or group." Manipulations of the board agendas are sometimes driven by individual or group agendas, which may or may not be disclosed. Boards should be careful to make sure that the agenda-setting process is fairly administered and is not used as a mechanism for advancing purely individual or majority agendas. Even within a system of majority rule, the opportunity for airing of minority views remains an important aspect of democratic systems. Agenda setting must strike a balance between efficient governance and healthy debate.

Links

- www.sog.unc.edu/publications/books/suggested-rules-procedure-city-council-fourth-edition-2017
- www.sog.unc.edu/publications/books/suggested-rules-procedure-board-county-commissioners-0
- en.wikipedia.org/wiki/Raise_a_question_of_privilege
- canons.sog.unc.edu/?p=2459
- www.ncleg.net/enactedlegislation/statutes/html/bysection/chapter_160a/ga_160a-71.html
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