Concern: Free Speech in Public Meetings

A goal of the Weare Police Department is to keep the peace. This includes providing a safe environment for Town business to be conducted while also ensuring the constitutional freedoms guaranteed to citizens are maintained.

A situation recently unfolded where a question was posed to WPD on what action could be taken against a citizen who was disorderly through verbal disruption during a public meeting.

WPD obtained the opinion of WPD Police Legal Counsel and the Town Attorney, both concur disruption of a public meeting is grounds for disorderly conduct under RSA 644:2 III (b) and (c) *Disorderly Conduct*

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644:2 Disorderly Conduct. –
A person is guilty of disorderly conduct if:

III. He purposely causes a breach of the peace, public inconvenience, annoyance or alarm, or recklessly creates a risk thereof, by:
(b) Disrupting the orderly conduct of business in any public or governmental facility; or
(c) Disrupting any lawful assembly or meeting of persons without lawful authority.

To help explain how the courts have interpreted balancing a citizen's right to free speech against the government's interest to conduct business in an orderly fashion, WPD is referencing three resources found on-line:

- New Hampshire Municipal Association *Public Meetings and Freedom of Speech: When Do Citizens Have a Right to Speak?*

    - **Is there a constitutional right to be heard?** There is no absolute right to speak at a public meeting. As the United States Supreme Court put it, "The Constitution does not grant to members of the public generally a right to be heard by public bodies making decisions of policy." *Minnesota State Bd. for Community Colleges v. Knight*, 465 U.S. 271 (1984). Certain statutes create rights to speak at public hearings under certain circumstances (for example, a budget hearing under **RSA 32:5** or a

zoning board of adjustment hearing under **RSA 676:7**), and violation of these rights may in some instances be a violation of constitutional due process law.

- **What kind of a "forum" is a public comment period?** (Summarized Response) **…**Federal courts often use the term "limited public forum" to apply to public comment sessions…. Courts will generally approve the control of public comment sessions with carefully drawn content-neutral "time, place and manner" restrictions on speech, such as limiting the subjects to matters on the agenda, limiting the time allowed to each speaker and preventing disruption of the meeting. Such regulations need to have been adopted as general policy prior to use…
  - The Town of Weare utilizes *Roberts Rules of Order* to provide the structure for Town meetings.

- ACLU, Washington Branch *Know Your Rights Regarding Public Comments and Other Speech at Local Government Meetings*

  - **If a public comment period is provided, can the body limit the discussion to certain subjects?** Certain local government meetings, including city council meetings, when open to the public, are considered "limited public forums." This means that a city council can enact viewpoint-neutral "place, time, and manner" restrictions on speech if there is a legitimate and compelling government interest. *Steinburg v. Chesterfield Cty. Planning Comm'n*, 527 F.3d 377 (4th Cir. 2008). Local government bodies can limit speech to certain topics (e.g. agenda items) and timeframes as long as such restrictions are not unreasonable and as long as the restriction is not based on disagreement with a speaker's viewpoint. In Steinburg, the Fourth Circuit found that the defendant planning commission had a basis for ejecting Steinburg, a local citizen, from a public meeting for bringing up matters not within the scope of the agenda item at hand. Id. The Court said that "imposing restrictions to preserve civility and decorum [are] necessary to further the forum's purpose of conducting public business." Id. at 385. However, it is important to note that courts also require actual disruption in order to exclude a person from a meeting.

  - **Can a local government body provide for public comment but restrict obscenity or disruptive conduct by speakers?** If speakers are being actually disruptive or threatening at any time during public hearings, their speech may be restricted by the governmental body. (Examples Provided).

  - **Are local government bodies allowed to limit a public speaker's time? What is a reasonable time limit?** (Answer Summarized) Imposing a time limit on a speaker during a public comment period is permissible

within the "reasonable time, place, and manner" standard. *Shero v. City of Grove*, 510 F.3d 1196, 1203 (10th Cir. 2007) … time limits are content- and viewpoint-neutral and continue to serve a "compelling government interest,"…

- NH Office of Energy and Planning *Free Speech at Public Meetings-The New Hampshire Right to Know Law*

  - **Open to the Public**. Anyone (not just town residents) can attend any public meeting. They can take notes, tape record, take pictures, and videotape. Open to the public does NOT mean the right to speak at the meeting. NOBODY has a right to disrupt a meeting or to speak without being invited. Chapter 91-A only gives a right to attend, not a right to participate.
  - **"Right-to-Know" Does Not Include Right to Speak**. There is not one word in RSA Ch. 91-A giving any person the right to speak at a public meeting. On the contrary it is essential to keep order in order to be able to conduct public business. ANY interruptions should be quickly dealt with. The Chair presiding over the meeting should be politely firm, keep a strong gavel, and should not hesitate to rule someone out of order. As a last resort, if someone is disrupting the meeting or interfering with the board's business, the chairman can order the person out of the room, with the help of a police officer.

    In the case of *State v. Dominic*, 117 N.H. 573 (1977), one of the three Selectmen in Belmont continued to interrupt even after the Chair had told the other Selectman that he had the floor. The Chair finally left the room, came back with a police officer, who asked Dominic to step out of the room. He refused, and was arrested for "disorderly conduct" (RSA 644:2, I -- later declared unconstitutionally vague as applied to an unrelated context, *State v. Nickerson*, 120 N.H. 821 (1980)). The N.H. Supreme Court held that Dominic's subsequent conviction was valid:

    > "The issue before us is whether Chairman Clairmont could lawfully order defendant's removal from the selectman's meeting. As presiding order of the board of selectmen, (he) had the responsibility of conducting the meeting in an orderly manner . . . When defendant continued to interrupt Mr. Wuelper, who had the floor according to the chairman's ruling, and when defendant continued to argue with the chairman and refused to come to order, the chairman had the authority to order him from the room . . .
    >
    > "The actions of the chairman and of Officer Bennett in ordering defendant's removal from the meeting did not violate his right to freedom of speech under the United States and New Hampshire

Constitutions. The district court found that defendant, by his conduct, had prevented the selectmen from continuing their meeting. The chairman was acting to maintain order, as was his duty, and to protect the rights of others to speak in an orderly manner as well as those of the defendant. Such reasonable regulation of the manner in which one may speak does not violate any right to freedom of expression . . .” (117 N.H. at 575-6, citations omitted).

If even a selectman can be punished for speaking at a meeting, there can be no doubt that members of the public can also be restricted. The degree to which any municipal board or body wishes to allow public participation in its meetings is within its discretion.

- **Due Process Rights to Public Hearings.** The only time there is a CONSTITUTIONAL right to be heard at a public meeting is during a public hearing concerning a matter which affects a person’s property rights. And here, it is not the First Amendment right to free speech which is involved, but rather the right not to be deprived of property without DUE PROCESS OF LAW. In *Calawa v. Litchfield*, 112 N.H. 262 (1972), the Legislature attempted to legalize a number of town meetings in Litchfield, including one which enacted a zoning ordinance restriction against multi-family dwellings. The Supreme Court held that where the notice and hearing requirements had not been met, these meetings COULD NOT BE LEGALIZED by the Legislature, because the notice and hearing requirements are constitutionally mandated whenever citizens’ property rights may be affected:

  “In delegating to towns and cities the authority to enact zoning ordinances the legislature provided for notice and hearing as a prerequisite to the valid enactment of the ordinance ... The provisions spell out a fundamental requirement of due process that before substantial restrictions are placed upon an individual’s use of his property, there must be notice and an opportunity to be hearing afforded the property owners concerned . . . The notice provisions were not a requirement that might have been omitted from the original legislation without invading a constitutionally-protected interest.” (112 N.H. at 265-6, citations omitted.)

- **What is the “Opportunity to be Heard”?** The hearing rights set forth in the Calawa case have not been filled in great detail by the Court. The benchmark is that the right to be heard must be granted at a meaningful time and in a meaningful manner. See *City of Claremont v. Truell*, 126 N.H. 30 (1985); Petition of Bagley, 128 N.H. 275 (1986). It is notable, however, that the type of hearing MOST likely to satisfy constitutional due process is a full-blown court hearing.