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How much public comment must we allow under the Open Meeting Law?

“Courage is what it takes to stand up and speak; courage is also what it takes to sit down and listen.” – Winston Churchill

Vermont’s Open Meeting law states that “(a)ll meetings of a public body are declared to be open to the public at all times ...” Furthermore, at “open meetings the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting ...” 1 V.S.A. §§ 313(a)(1), (h). These, as well as the other provisions of the Open Meeting law, apply to all municipal public bodies, when gathered as a quorum to discuss the business of the public body or for the purpose of taking action. 1 V.S.A. § 310(2). A “public body” is defined as “any board, council, or commission of the State or one or more of its political subdivisions ... or any committee of any of the foregoing boards, councils, or commissions ...” 1 V.S.A. § 310(3).

The law doesn’t prescribe a standard amount of time to be set aside for public comment other than to say that “the public shall be given a reasonable opportunity to express its opinion ...” This “reasonable opportunity” afforded the public is not without its limits. Public comment may, though certainly need not be, limited to only those “matters considered by the public body.” It is also “subject to reasonable rules established by the chairperson” and permissible only “as long as order is maintained.” 1 V.S.A. § 313(h).

Though the public must be given a reasonable opportunity to express its opinion on matters considered by the public body, the principal purpose of any meeting is for the transaction of the business of the public body. In other words, these are meetings that are conducted *in* public, but are not meetings *of* the public. Meetings of a public body are “limited public forums” which means that they are spaces created for a specific purpose – the work of the public body – and while in this forum the public body does not have to allow the public to engage in every type of speech imaginable. Rather, it can limit discussion to certain topics (e.g., those items on its agenda) so long as it does so in a manner that doesn’t discriminate on the basis of any speaker’s viewpoint. Public comment is typically allowed either after the discussion of each agenda item but before the public body takes action, reserved to the beginning or end of the meeting, or a combination of the two. A public body’s rules of procedure should clearly state when and for how long public comment will be allowed.

The amount of time set aside for public comment is a function of the type of meeting the public body is conducting, the matters being considered, and the degree of public interest. Providing a “reasonable opportunity” for public comment does not mean allowing all public comment. While public comment can be limited to the business of that particular meeting, VLCT recommends that the public body also allow public comment on any other subject within the public body’s purview under a catch-all heading such as “other business.”

In any event, the law only requires that the public is given a “reasonable opportunity” to comment; it does not allow the public to hold the public body as a captive audience. What is “reasonable”? The law doesn’t define it, but it must be long enough for the public to express its opinion and it will depend on the circumstances of your meeting. Sometimes nobody shows up, in which case you can just move along to the next agenda item. Or perhaps just a few do, in which case three to five minutes should suffice. Other times, your meeting room may be packed, in which case it may be reasonable to set aside a total of 30 minutes for public comment, with two to three minutes allocated to those who raise their hands or who line up behind the microphone first. The law does not require that every person have an opportunity to speak at a meeting. When it is impossible to take public comment from everyone and expect to get home at a reasonable hour, the time dedicated to public comment should be clearly communicated; anyone who did not have an opportunity to comment should be invited to submit written comments.

Some topics elicit little if any public comment while other more controversial proposals naturally engender more. Public bodies should craft their rules of procedure to reflect the flexibility necessary to adjust the amount of time set aside for public comment. This can be done with a provision such as the following: “By [unanimous/two-thirds/majority] vote, the public body may increase the time for open public comment and may adjust the agenda items and times accordingly.” Otherwise, this can be done by order of the chair of the public body. Certainly if the underlying purpose of the meeting is to solicit public comment – as is the case when the planning commission or selectboard is holding its statutorily required public informational hearings to consider adopting, amending, or repealing the town plan or zoning regulations – then most of the meeting should be committed to this purpose.

The Vermont Legislature has set the same undefined “reasonableness” standard for time limits as it has for rules established by the chairperson. Despite this lack of direction, courts around the country have upheld the use of reasonable rules to stop a member of the public who is disruptive, fails to keep to the subject matter at hand, whose speech has become repetitive or irrelevant, who repeatedly interrupts others, who lacks respect for rules of decorum, or who has attempted to “highjack” a meeting. There is little doubt that Vermont courts would do the same. Vermont law places a premium on public comment because of the vital contribution it makes in informing and sustaining our local democracy. This is balanced by the need for civility and recognition of the sacrifice of volunteers to keep our towns running. Your rules of procedure should reflect these competing values.

There is an exception to the part of the Open Meeting Law that allows public comment at public meetings. An opportunity for public comment may be, but does not have to be, provided during quasi-judicial hearings. A public body acts in a quasi-judicial capacity when it is adjudicating the legal rights of one or more persons. This takes place when a public body is acting “like a court” (e.g., tax appeals, applications for development review, vicious dog hearings, requests to reclassify roads, etc.). While these types of meetings are still open to the public and subject to the other requirements of the Open Meeting Law, they are not subject to public comment. “At an open meeting the public shall be given a reasonable opportunity to express its opinion on matters considered by the public body during the meeting ... ***This subsection shall not apply to quasi-judicial proceedings.***” 1 V.S.A. § 312(h). [Emphasis added.] While acting in this capacity, a public body may certainly accept public comment, but it is under no legal obligation to do so.

VLCT's Model Rules of Procedure for Municipal Boards, Committees and Commissions, which were drafted with all these considerations in mind, can be found on our website, <http://www.vlct.org/assets/Resource/Workshops/2015/13-VLCT-Model-Rules-of-Procedure-for-Municipal-Bodies.pdf>.

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