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STATE OF MICHIGAN

FRANK J. KELLEY, ATTORNEY GENERAL

Opinion No. 5332

July 13, 1978

OPEN MEETINGS ACT:

Right to address

BOARDS AND COMMISSIONS:

Right to address

SCHOOLS AND SCHOOL DISTRICTS:

Right to address

A rule of a public body limiting the period of citizen participation to 1/2 hour may not be applied in a manner which completely denies a person the right to address the public body.

A public body may adopt a rule imposing time limits during which a member of the public may address the public body.

The right to address a meeting of a school board may not be limited to persons who are residents of or members of the educational community of a school district.

A public body may not deny a member of an organized bargaining unit having a negotiated contract with the public body the right to address the public body at an open meeting.

A public body may adopt a rule prohibiting a personal attack on an officer, employee or board member only if the personal attack is totally unrelated to the manner in which the officer, employee or board member performs his or her duties.

Honorable Richard D. Fessler

State Representative

The Capitol

Lansing, Michigan 48901

Enclosing a copy of by-laws adopted by the Board of Education of West Bloomfield School District, you have asked me to review its provisions dealing with audience participation in light of Sec. 3(5) of the Open Meeting Act, 1976 PA 267; MCLA 15.263(5); MSA 4.1800(13)(15), which, in pertinent part, states:

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

The portion of the West Bloomfield School District by-laws dealing with audience participation state:

'Agenda Structure and Operation:

The agenda and related reference materials for each regular Board meeting shall be prepared in advance by the Superintendent in consultation with the President of the Board and a copy shall be mailed or delivered to each board member on or before the Friday preceding the regular Monday meeting.

Up to one-half hour of each meeting shall be devoted to citizen items of information and inquiry. At this time any member of the West Bloomfield educational community shall be permitted to speak to any topic listed on the agenda or to any other topic that is related to the West Bloomfield School District's operation. Time limits shall be placed on individual speakers, normally two to five minutes, in order to allow for wide citizen participation while permitting an adequate amount of time for the Board to conduct its business. The extension of this one-half hour citizen participation shall only take place upon a formal vote of the majority of the board members.

'Audience Participation:

'Unless specific permission is granted by a majority vote of the board members, audience participation shall be limited to audience members who are residents or who are members of the West Bloomfield School District's educational community.

'At its open public meetings, the Board encourages responsible comments, in writing or orally, by all segments of the educational community. The educational community is defined to include students, residents, taxpayers, staff, administrators and board members. Any member of the educational community shall be permitted to address the Board at such open public meeting provided he shall have previously discussed a problem area with the building principal or appropriate administrator. Except that no member of an organized bargaining unit having a negotiated contract with the Board shall be permitted to speak on any subject which is:

- a. Covered by the existing agreement, or
- b. subject to the grievance procedure or to contract negotiations.

'Meetings of the Board are conducted for the purpose of carrying on the business of the schools; and although held in public, the public shall not be active participants in the deliberations and actions of the Board.

'Meetings are closed to the public only during executive 'closed' sessions, which shall be held only for the purposes specified in the bylaws of the Board. All action, however, is taken in public meeting.

'In order that the Board may fairly and adequately discharge its overall responsibility, citizens who wish to make requests, presentations, or proposals to the Board are requested to direct these to the Superintendent of Schools as far in advance as possible, who will deal with them according to rules adopted by the Board. The intent of the rules is:

- '1. To allow everyone who wishes it a fair and adequate hearing.
- '2. To allow the Superintendent of Schools to take direct action or to recommend action to the Board when policies have already been established by the Board.
- '3. To minimize the possibility of the Board making ill-advised, illegal, or improper rulings due to hasty action in the absence of adequate information and study, especially when a policy does not exist, a change in policy is proposed, or an exception to policy is specifically requested.
- '4. To see that the time so devoted does not interfere with the scheduled business of the Board.
- '5. The Board shall not permit personal attacks upon any individual employee or board member during Board meetings. The Board will, however, accept written allegations without public discussion.
- '6. A person may be excluded from said meeting by causing a breach of the peace at said meeting.
- '7. Requests for information made to the Board or administration will be honored within reason. Requests which require a substantial amount of time to assemble will be honored only on a discretionary basis as determined by the Board.'

A review of these provisions indicate that the following issues must be considered:

1. May the period of time during which members of the public may address the public body be limited to 1/2 hour?
2. May the public body impose time limits on individual speakers?
3. May the right to address the public body be limited to persons who are residents of or members of the educational community of the West Bloomfield School District?
4. May the public body deny a member of an organized bargaining unit having a negotiated contract with the board the right to address the public body at an open meeting where the subject of the address refers to contract negotiations?
5. May the public body prohibit a person from making an address to the public body during an open meeting which is a personal attack on an officer, employee or board member?

These questions will be addressed seriatim:

1. May the period of time during which members of the public may address the public body be limited to 1/2 hour?

1976 PA 267, Sec. 3(5), supra, represents a departure from open meeting provisions contained in prior legislation. ⁽¹⁾ Usually the public's right to attend a meeting of a public body is limited to the right to observe and hear the proceedings so that they may be informed of the manner in which decisions affecting them as citizens are made. For this reason, in granting to the public an additional right to address the public body, the legislature made this right 'subject to rules established and recorded by the public body.' 1976 PA 267, Sec. 5 supra. Nevertheless, although the right to address a public body may be limited by reasonable rules of the public body, the provision may not be construed as empowering a public body to develop rules which completely deny the right of a person to address the body. OAG, 1977-1978, No 5183, Part II, p ____ (March 8, 1977). Since a provision which limits the period of time at a public meeting during which citizens may address the public body to 1/2 hour may result in certain members of the public being denied the opportunity to address the body, it is my opinion that, if the rule limiting the period of citizen participation to 1/2 hour is applied in a manner which completely denies a person the right to address the public body, it will constitute a violation of the act.

I recognize that occasions may arise when it is impractical for the public body to hear out the comments of every person present if an unusually large crowd attends the meeting and every person wishes to be heard. Since the public body has a duty to carry out its public responsibilities, it may be necessary to adopt rules which authorizes the chairperson to place limits on how long a person may speak and such methods by which an individual representing a particular viewpoint may be designated by others to speak for them. Other devices to handle such unusual situations may also be explored such as a requirement that persons who wish to speak indicate this desire in writing prior to the meeting so that proper time arrangements can be made.

2. May the public body impose time limits on individual speakers?

In my response to your first question I indicated that a rule limiting the time during which an individual speaker may address a public body is valid.

3. May the right to address the public body be limited to persons who are residents of or members of the educational community of the West Bloomfield School District?

Since a rule excluding non-residents from the right to address a public body may have the effect of completely denying a person this right, it is my opinion that this rule is invalid. Although generally actions taken by the board of education of a particular school district will only have a direct effect on residents of that district, employees of the board and other members of the educational community in that district, there may be occasions when important educational policies are being considered by a school district that may have an indirect impact on persons who are neither residents of the district nor members of the educational community in the school district. The legislature has not prescribed any qualification upon the right of persons to address a public body. Therefore, since the legislature has specifically stated that 'a person shall be permitted to address a meeting of a public body' the school board may not limit the right to address to certain persons who have only a direct interest in the proceedings.

4. May the public body deny a member of an organized bargaining unit having a negotiated contract with the board the right to address the public body at an open meeting where the subject of the address refers to contract negotiations?

1976 PA 267, supra, Sec. 8(c) permits a public body to hold a closed meeting to discuss strategy in connection with

the negotiation of a collective bargaining agreement when either negotiating parties requests a closed session.

This authority of the public body to hold a closed session discuss collective bargaining agreements may not serve as the basis for denying a person the right to address the public body. It is therefore my opinion that the board may not adopt this rule which may have the effect of completely denying to a person the right to address a meeting of the board.

5. May the public body prohibit a person from making an address to the public body during an open meeting which is a personal attack on an officer, employee or board member?

The purpose of a meeting of a board of education is to discuss public business and not to deal with individual personalities. It is my opinion therefore that the board may adopt a rule which prohibits a person from using the board's and public's time to make a personal attack upon an individual. However, if the phrase 'personal attack' used in Paragraph 5 of the audience participation provisions of the by-laws is intended to refer to the manner in which an employee of the board or a board member carries out his or her duties, the rule would be invalid; on the other hand, if the phrase refers to conduct of the person being attacked that is totally unrelated to the manner in which he or she performs his or her duties, the exclusionary rule may be applied.

Frank J. Kelley

Attorney General

(1) See 1968 PA 261 which was repealed by 1976 PA 267, supra, Sec. 14. See also the open meeting provisions contained in statutes dealing with specific agencies such as the Legislative Apportionment Commission, 1963 second ex sess PA 46, Sec. 5; MCLA 4.15; MSA 2.28(5), and Charter Township Boards, 1947 PA 359, Sec. 7; MCLA 42.7(d); MSA 5.46(7)(d).

<http://opinion/datafiles/1970s/op05332.htm>

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