



Rob McKenna

ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

March 24, 2009

The Honorable Michael Echanove
Mayor, City of Palouse
Palouse City Hall
East 120 Main Street
P.O. Box 248
Palouse, WA 99161-0248

RE: Restrictions on Public Comment Periods

Dear Mayor Echanove:

I am the Attorney General's Open Government Ombudsman and I provide assistance to the public and agencies for compliance with the state Public Records Act and Open Public Meetings Act. I received a letter from the Boomerang questioning the city's policy prohibiting public comment on personnel issues of city staff. Any policy prohibiting comment on a specific topic would have serious constitutional implications. I would ask the city to consider my informal advice in this letter.

The ability of citizens to voice their opinions about the performance of the public employees and officials who serve the public is one of the cornerstones of a free and accountable government. Particular criticism of government conduct may irritate the city, but such criticism is protected by the First Amendment of the United States Constitution, and by Article I, Section 5 of the Washington Constitution. In the case of *Mesa v. White*, 197 F.3d 1041 (10th Cir. 1999), a county refused to allow public comment and criticism about the county manager. The court found that the restriction was unreasonable, an attempt to silence opinions, and a pretext for censorship.

A municipality that deliberately allows a general public comment period during its meetings creates a limited public forum for constitutionally protected free speech. The city may not restrict speech it merely dislikes, but has some ability to limit public comment in a neutral manner. The city may set time limits or noise limits to public speech.

The Open Public Meetings Act allows the city to remove an individual if they are being disruptive. RCW 42.30.050. A municipality may adopt a policy to prohibit personal attacks such as insults if they lead to disruption of the meeting. *Steinburg v. Chesterfield County*



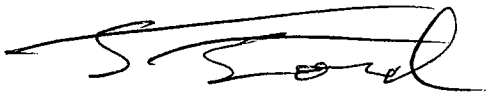
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Planning Comm'n, 527 F.3d 377 (4th Cir. 2008). Yet even *Steinberg* acknowledges that criticism may not be prohibited where the speech is directed on a substantive idea. Personal insults should not be confused with insulting criticism over the conduct of public officials or employees. Moreover, *Steinberg* does not allow the city to prohibit public comment on a particular topic when the public comments are neither personally insulting nor disruptive.

The United States Constitution reflects “a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open, and that it may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). If the city allows a general public comment period at its meetings but prohibits comment on personnel issues, then the prohibition should be repealed.

Sincerely,



TIMOTHY D. FORD
Open Government Ombudsman
Assistant Attorney General

TDF:eg

cc: Darcie Bagott, Palouse City Council Member
Mark Bailey, Palouse City Council Member
Mike Milano, Palouse City Council Member
Norm Schorzman, Palouse City Council Member
Rick Wekenman, Palouse City Council Member
Andy O'Neill, Palouse City Council Member
Jeff Snook, Palouse City Council Member
Steve McGehee