
Coates' Canons Blog: Statutorily Required Public Comment Periods: What Are They and How Do They Work?

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UPDATE August 2013: For more on the public's right to speak at meetings, click [here](#).

I find that many local officials are unclear about the statutory requirement that they hold “public comment periods” on a regular basis. In this post, I will answer some of the questions about comment periods—which boards must hold them and how often, what they are and what they are not, what types of comments are allowed, and what procedures local officials may adopt to govern comment periods.

In 2005, the General Assembly enacted S.L. 2005-170 (H 635), which mandates that city councils, boards of county commissioners and local boards of education provide at least one period of public comment each month at a regular meeting of the board. The law is codified with nearly identical language at G.S. 115C-51 (school boards), G.S. 153A-52.1 (counties), and G.S. 160A-81.1 (cities). The board need not provide a comment period if no regular meeting is held during the month.

The public comment period requirement does not apply to appointed boards and to other elected boards, although they may be governed by public hearing or other requirements (see the next paragraph). These other boards may of course also choose on their own to hear from the public and, if they do so, they must observe the rules for limited public forums discussed below.

Public comment periods held pursuant to S.L. 2005-170 are different from other instances where public comment is

solicited. For example, public *hearings*, whether required by law or held voluntarily, are generally limited to particular subjects, such as the rezoning of specific property, a budget proposed for adoption, or the receiving comments about noise regulation. For more information about the types of hearings that may be held, please see David Owens, "[Zoning Hearings: Knowing Which Rules to Apply](#)." In addition, David Lawrence has written a blog post, "[When Are Public Hearings Required](#)," that provides a list of statutes that require a city council or a board of county commissioners to hold a public hearing.

Participants in statutorily required public comment periods, on the other hand, are generally free to comment on any subject that is within the jurisdiction of the local government that is holding the comment period. The public comment period is a "limited public forum" for purposes of the First Amendment's rules on freedom of speech, and the broad language of the statutory directive to hold "public comment periods" likely means that the board must allow general comments about any topic related to the city, county, or school district. The board also must be careful not to restrict comments about such topics based on the viewpoint stated by the speaker, or by the forcefulness of the speaker's arguments.

This is not to say that boards cannot have any rules governing public comment periods. In language borrowed from G.S. 153A-52 and G.S. 160A-81, the public hearing statutes for counties and cities, G.S. 115C-51, G.S. 153A-52.1, and G.S. 160A-81.1 allow boards to adopt reasonable regulations governing the conduct of public comment periods, including but not limited to rules setting time limits for speakers, and providing for (1) the designation of spokesmen for groups supporting or opposing the same position, (2) the selection of delegates from groups supporting or opposing the same position when the number of persons wishing to attend the comment period exceeds the capacity of the hall, and (3) the maintenance of order and decorum in the conduct of the public comment period. Under the First Amendment, these types of rules are called "reasonable time, place, and manner" restrictions on speech.

Are there ever instances where boards can limit the topics discussed at public comment periods, other than a requirement that the subjects addressed be related to the jurisdiction? For example, some boards have adopted a rule that the subjects discussed during the comment period be ones that are on the board's agenda, or conversely, that they be unrelated to agenda items. Other boards may wish to limit public comments about individual public employees. As noted above, the statutory requirement that public comment periods be held is quite broad, and it contains no authorization for such content-based restrictions. Could such restrictions ever be seen as reasonable time, place, and manner regulations, as long as the board does not censor speech based on viewpoint?

Would it be permissible, for example, for a board to limit public comments about individual public employees or officials, as long as the board was careful to provide an adequate, alternative means for persons to air their comments or concerns? The board could make clear whom to contact if the concern involves a staff employee who is under the direct supervision of a city or county manager or a school superintendent, or of some other director or department head. In addition, the board could invite the person with a concern to attend part of a closed session of the board for personnel matters, and to raise his or her issues there.

Protection from public criticism is clearly not available for the elected board members themselves. As a practical matter, if someone wishes to complain to the board about its actions or those of one of its members, the only place where the concern may be raised publicly in front of the entire body is generally during the public comment period or at a public hearing.

Such comments are at the heart of the political speech that is protected by the First Amendment's guarantee of freedom of speech. In fact, criticism of public officials has a long and respected history in the United States, going back to colonial times when it was generally not protected speech. Consider, for example, the Edenton and Boston Tea Parties and the hanging of King George III of England in effigy. I often tell local elected officials, only half jokingly, that a thick skin and a polite willingness to endure criticism are essential job requirements for their positions.

For more information on public comment at board meetings, please see the two-part article, "Public Comment at Meetings of Local Government Boards," available [here](#) and [here](#), that my School of Government colleague [John Stephens](#), and I wrote with assistance from Christopher Bass, a 1996 law clerk at the School of Government.

Links

- sogweb.sog.unc.edu/blogs/localgovt/wp-content/uploads/2010/05/Mural20.jpg
- www.sog.unc.edu/organizations/planning/onlinepubs/pgsp93.htm?page=pg&category=Popular%2520Government%2520magazine
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