



NHSBA

NEW HAMPSHIRE SCHOOL BOARDS ASSOCIATION

**Dealing with Disruptions at Deliberative Session
2022 Moderator's Workshop – SB2**

January 8, 2022

Public Meetings v. Meetings of the Public

- Under the Right to Know law annual meetings are meetings of the legislative body that are open to the public, but not meetings of the “public”.
- Registered voters in attendance comprise the legislative body, and, subject to the rules established by the meeting, have the right to speak.
- The “public” – i.e., those who are not registered voters, may speak only at the pleasure of the meeting.

Out of Order Speakers & Disruptive Attendees

- Under the U.S. Constitution and New Hampshire law, persons who actively disrupt a public meeting and/or refuse to follow reasonable meeting rules may lose their right to attend the meeting. (I.e., be ordered to leave.)
- If the order to leave is made by a law enforcement officer, then further refusal may lead to criminal charges. See RSA 644:2 (Disorderly Conduct).

Out of Order Speakers & Disruptive Attendees

- **40:7 Debate.** – No person shall speak in any meeting
 - without leave of the moderator,
 - nor when any person speaking is in order;
 - and all persons shall be silent at the desire of the moderator,
 - on pain of forfeiting \$1 for each offense, for the use of the town.

Out of Order Speakers & Disruptive Attendees

- **40:8 Disorder.** – If any person shall behave in a disorderly manner, and,
- after notice from the moderator, persist in such behavior, or
 - shall in any way disturb the meeting,
 - or willfully violate any rule of proceeding,
 - the moderator may command any constable or police officer, or any legal voter of the town,
 - to remove such disorderly person from the meeting and detain such person until the business is finished.

Out of Order Speakers & Disruptive Attendees

- **40:9 Duty of Police.** – Every constable or police officer
 - shall obey the orders and commands of the moderator for the preservation of order,
 - and may command such assistance as is necessary;
 - and if any constable or police officer neglects to perform any of the duties imposed by this or RSA 39 such constable or police officer shall forfeit \$40 for the use of the town.

Out of Order Speakers & Disruptive Attendees

➤ Under **RSA 644:2** (part of the New Hampshire Criminal Code) a person is guilty of disorderly conduct if:

III. He purposefully 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 government facility.

(c) Disrupting any lawful assembly or meeting of persons without lawful authority.

VI. Disorderly conduct is a misdemeanor if the offense continues after a request by any person to desist; otherwise, it is a violation.

Out of Order Speakers & Disruptive Attendees

- In *State v. Comely*, 130 N.H. 688 (1988), the New Hampshire Supreme Court upheld a disorderly conduct conviction after the defendant had caused a 1-1½ minute delay to the opening of the gubernatorial inauguration by walking down the aisle and shouting remarks about the Seabrook nuclear facility as guests were being introduced.
- In *State v. Dominic*, 117 N.H. 573 (1977), the Supreme court ruled that a town selectman could be found guilty for refusing an order of a police officer to leave a select board's meeting after the defendant had "continually interrupted" another board member, argued with the chairperson concerning the chair's rulings, and ignored the chair's efforts to regain order.
- In an unpublished order dated May 2, 2019, the N.H. Supreme Court affirmed the convictions for disorderly conduct and resisting detention of a member of the public after he repeatedly refused to comply with a select board's public comment rules. *See State v. Jeffrey Clay, Case No. 2018-0184 (N.H. S.Ct.)*.

Out of Order Speakers & Disruptive Attendees

- Disruptions must be actual, not constructive, technical or anticipatory (i.e., a perception comments could cause a disruption after the fact).
- Examples of actual disruptions:
 - Refusal to stay on article under discussion;
 - Speaking without being recognized by the Chair; and
 - Shouting and yelling while others are speaking;
 - Repeatedly moving in a manner that interferes with others ability to see or hear the proceedings.

Out of Order Speakers & Disruptive Attendees

- Symbolic and/or passive “speech” that is neither disruptive nor violative of other laws (electioneering) is protected by the First Amendment.
- Passive/symbolic speech examples:
 - eye rolling;
 - stray or minor utterances;
 - symbolic gestures;
 - tee shirts with provocative messages.
- Signs, or other symbolic speech may be disruptive depending on how they are held, displayed, etc.

Out of Order Speakers & Disruptive Attendees

PROCEED CAREFULLY

- Keeping in mind the substantial personal right we have to free speech, and the public has to attend open meetings, a decision to remove a person from a meeting should be taken and carried out with due care.
- Meet with officer or Chief before the meeting;
 - Discuss meeting rules;
 - Discuss cues and steps before invoking removal power.

Out of Order Speakers & Disruptive Attendees

➤ Steps to take before removal:

- Provide paper copies of meeting rules;
- Summarize the rules at start of the meeting;
- Apply the rules equally, with only minor variance;
- **Strike 1:** Provide clear warnings and instructions (not mere polite requests) before taking formal action;
- **Strike 2:** If disruption persists, call a recess and try to talk with the person – preferably with officer assistance;
- **Strike 3:** Provide at least one last chance after alerting officer;
- **Clearly** order the person to leave, and ask officer's assistance to effect that order. **Officer must see the disruption, preferably after strike 2 recess.**

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