



ALAN WILSON
ATTORNEY GENERAL

May XX, 2025

The Honorable Tom Davis
Member
South Carolina Senate
Post Office Drawer 1107
Beaufort, SC 29901-1107

Dear Senator Davis:

Attorney General Alan Wilson has referred your letter to the Opinions section. Your letter requests an opinion addressing the following:

Some members of the councils for the municipal and county governments in my state senate district have asked for clarification re: one of their councils' rules for comments solicited and received from members of the public at their meetings. I request your assistance in formulating a response to these inquiries.

Enclosed are the rules for the Town of Hilton Head Island, the Town of Bluffton, and Beaufort County. In each, the speaker is 1) limited to a three-minute comment; 2) required to be respectful; and 3) prohibited from speaking on another's behalf. My request for your assistance pertains to the third noted restriction.

In recent months, a member of the public (the "Speaker") has, after speaking for his allotted three minutes, attempted to speak on behalf of another person (the "Designating Person") as an attorney-in-fact. For purposes of your opinion, assume the Designating Person has complied with all relevant sections of the South Carolina Uniform Power of Attorney Act in attempting to empower the Speaker.

Is a local government council obliged to allow the Speaker to provide a public comment on behalf of the Designating Person as the latter's attorney-in fact, even after the Speaker has already spoken for the three minutes allotted to him personally, or is the council legally justified in denying the Speaker from speaking?

Law/Analysis

As an initial matter, it should be noted that this Office is issuing an expedited opinion, and it should be read in the context of this Office's prior opinions and other applicable law. This Office's opinion to Terry Finger examined this scenario and concluded that because the rules appeared content neutral and reasonably related to maintaining order, a court was unlikely to find a facial violation of the First Amendment's protections for speech.

The third and final regulation states, "Meeting attendees may not donate, transfer, yield, or give all or any portion of their speaking time to another person." Based on our follow up conversation, this Office understands that this regulation is intended to be read in conjunction with the second regulation above which establishes a time limit "whether the person is speaking on their own behalf or as an agent for others." A speaker would be allowed to speak on behalf of another, but, even if speaking on behalf of multiple people, the speaker would not be permitted to stack each person's allotted time and defeat the intended three-minute time restriction. This Office has not found a case directly confronting such a rule in the context of a public meeting of a public body. The First Amendment case law discussed above counsels that restrictions on speech should be content neutral. Steinburg, *supra*. Additionally, presiding officers "have *discretion* ... to cut off speech which they *reasonably* perceive to be, or imminently to threaten, a disruption of the orderly and fair progress of the discussion, whether by virtue of its irrelevance, its duration, or its very tone and manner." Steinburg, 527 F.3d at 390 (internal quotations omitted). Because the regulation is content neutral and appears reasonably related to maintaining order and fair progress of a meeting, a court would likely find it does not facially violate the First Amendment protections of speech.

Op. S.C. Att'y Gen., 2023 WL 3975070, at 5 (June 5, 2023). Your letter presents an additional level of detail in that a speaker is designated to speak on another's behalf as an attorney-in-fact. It is this Office's understanding that, as represented the prior opinion for the Town of Bluffton, such a designee would be allowed to speak as an attorney-in-fact, but would not then be allowed to continue beyond that time for his own time or that of additional persons. The speaker can use the time period on his behalf, that of the designated person, or both. This arrangement could also be appropriate to allow a speaker to address council on behalf of LLPs, LLCs, and corporations. This prohibition on stacking appears designed to prevent a single speaker and a single viewpoint from dominating public comment periods to the exclusion of other interested parties. A rule of this type has not been addressed by our state courts, but the opinion interpreted it to be consistent with a presiding officer's discretion to ensure the orderly and fair progress of a public meeting.

Municipal councils are directed to “determine [their] own rules and order of business” which establish the procedures for conducting public meetings. S.C. Code § 5-7-250(b). Municipal councils have wide discretion over their rules of order so long as they do “not conflict with the general laws of the state” and more specifically the South Carolina Freedom of Information Act (“S.C. FOIA”). S.C. Code § 5-7-250(c).

The S.C. FOIA provides that “[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter.” S.C. Code § 30-4-60. While these meetings are open to the public, the S.C. FOIA clarifies that an individual may still be removed if he “wilfully disrupts a meeting to the extent that orderly conduct of the meeting is seriously compromised.” S.C. Code § 30-4-70(d). This Office previously found these statutes do not establish “a per se right to speak at a public meeting under FOIA.” Op. S.C. Att’y Gen., 2019 WL 5669045, at 5 (October 17, 2019). Although the Freedom of Information Act may not require providing an opportunity to speak at a public meeting, we stress that this point should not be construed to deny interested parties an opportunity to be heard at a public hearing.

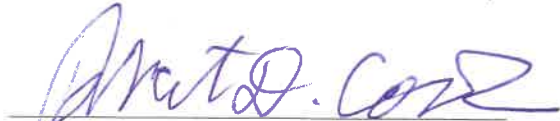
Op. S.C. Att’y Gen., 2023 WL 3975070, at 2-3 (June 5, 2023). Assuming the attorney-in-fact is attempting to speak at a public meeting, it is this Office’s opinion that municipal council has the authority to prohibit him from stacking his time with that of other persons beyond an allotted time period permitted for an individual.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General