
MEMORANDUM

TO: EERMC
FROM: MARISA DESAUTEL, ESQ.
SUBJECT: PARTICIPATION OF COUNCIL MEMBERS IN PUBLIC COMMENT
PROCESS
DATE: NOVEMBER 15, 2017

This memorandum explains the ability of EERMC membership to participate in the public comment process of its meetings, as a member of the public. The Rhode Island Open Meetings Act, R.I.G.L. §42-46-1, *et. seq.*, EERMC's by laws, and several advisory opinions from the Rhode Island Attorney General's office, indicate that it is appropriate for any member of the EERMC to participate in the public comment process during a regularly scheduled meeting, subject to some restrictions.

Under the state's Open Meetings Act ("OMA"), the EERMC must provide the public with adequate and timely notice of the meeting and its purview. However, the OMA is silent on the issue of public comment during a meeting. Due to the Act's silence, the Rhode Island Attorney General's office has stated that "the policies and procedures concerning public comment at meetings governed by the Act are within the prerogative of the public body."¹

As previously stated, the EERMC must issue written notice of the dates, times, and places of its meetings, as well as the business to be discussed. Therefore, if council members actively participate in the public comment portion of the meetings, the topics and scope of comment must be contained in the public notice. Stated another way, no council member speaking as a member of the public during the public comment portion of the meeting, can discuss any topics not contained on the meeting notice.

The only exception to this general rule is the following provision:

"[N]othing in [the OMA] shall prohibit any public body, or the members thereof, from responding to comments of the public during a properly noticed open forum even if the subject matter of a citizen's comments or discussions were not previously posted, *provided such matters shall be for informational purposes only . . .*" R.I.G.L. §42-46-6(d) (emphasis added).

Under this exception, matters raised by EERMC membership which are not listed on the meeting notice, cannot be voted upon or otherwise disposed of. The matters discussed can be for the purpose of exchanging information only.

If council membership wishes to submit memorandum, letters, documents, etc. to be discussed during the public comment portion of a meeting, those materials must be submitted to the EERMC as described in the public comment announcement or to the acting EERMC Executive Secretary not less than forty-eight (48) hours before convening. If disposition, vote,

¹ *Schmidt v. Ashaway Fire District*, OM 98-34.

approval, or other official action is required for the issues contained in the aforementioned documents, the matter must be properly added to the agenda, otherwise only discussion for informational purposes may take place.

Should you have any questions, or require further briefing on this issue, please do not hesitate to contact me.