

SEDOR WENDLANDT EVANS FILIPPI

ASSOCIATION OF ALASKA SCHOOL BOARDS

LAW & POLICY DAY

December 10, 2021



A Free <u>And</u> Ordered Space At School Board Meetings.

 $\bullet \bullet \bullet$

(Or Maybe Not..)

John M. Sedor

SEDOR WENDLANDT EVANS FILIPPI





PART I: PUBLIC COMMENT

I DO NOT ONSENT.

Part 1: Public Comments Run Amok

The chair or presiding member of the assembly meeting may request persons testifying at public hearing to 2.30.055 Conduct of public hearing.

- give their name, and to identify their neighborhood or community of residence. Each individual giving testimony shall be allocated three minutes. The time limit for a designated Α.
- representative of a community council is five minutes. The time limit for a designated representative of the Native Village of Eklutna is five minutes. The speaker must focus testimony to the topic of the public hearing. Β.
- A person may testify once at public hearing on any item. While the public hearing is open, a person may testify on the changes in a substitute version and will not be precluded for having given prior testimony on
- A sign-up list may be implemented to facilitate the management of public hearing so that all who seek to C.
 - testify are allowed the opportunity to be heard in an orderly manner. A sign-up list may be initiated at any time by the chair of the assembly or the municipal clerk in
- D.

Continued public hearing may be scheduled for any day of the week.

In order to meet a deadline imposed by law, or

hearing is continued, public notice shall be given as soon as practicable.

Notwithstanding subsection E. of this section, the assembly may close a public hearing.

(AO No. 2014-2(S), § 3, 2-25-14; AO No. 2017-53 , § 10, 4-11-17; AO No. 2020-137(S) , § 2, 1-14-21)

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- A member of the public may request use of a sign-up list by submitting a written request to the
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- 2.
- municipal clerk by noon on the day prior to public testimony. When a written request for use of a sign-

- up list is timely filed by a member of the public, the municipal clerk may implement the sign-up list.

If the date, time, and location of continued public hearing cannot be announced when the public

If the assembly anticipates public hearing or assembly deliberation will draw more people than the assembly chambers will accommodate, additional space with audio or audio and video in the Wilda Marston Theater or other location will be used, if available, to facilitate seating for additional members of the public.

If necessary to pass a budget or appropriation item which is, in the sole discretion of the assembly,

- If a sign-up list is utilized, the municipal clerk shall manage the sign-up list to ensure fairness. If a public hearing is continued, the sign-up list will remain open and available to anyone present If any time scheduled for public hearing proves inadequate to hear all persons present to testify, the public

Municipality of Anchorage

Part 1: Public Comment – The Law

§ 29.20.020. Meetings public, AK ST § 29.20.020				
West's Alaska Statutes Annotated Title 29. Municipal Government (Refs & Ar Chapter 20. Municipal Officers and Emp				
	nicipal bodies shall be public or the public to be heard at regu			body shall provide
(a) Meetings of all municipal bodies shall t	(b) This section applies to h	ome rule and gener.	al law municipalities.	
(a) Meetings of all municipal bodies to be hear reasonable opportunity for the public to be hear(b) This section applies to home rule and general	25 A CANA	6		
Credits				
SLA 1985, ch. 74, § 7. Notes of Decisions (2)				
AS § 29.20.020, AK ST § 29.20.020	33 of the 2021 First Regular Session of the 32nd Legislat	ure. nat U.S. Government Works.		

Part 1: Public Comment – The Law

§ 44.62.310. Government meetin	gs public, AK ST § 44.62.310	
Key Cite Yellow Flag - Negative Trea Proposed Legislation West's Alaska Statutes Ann Title 44. State Governme Chapter 62. Administr Article 6. Open Mee	(a) All meetings of a governmental body of a public open to the public except as otherwise provided by the provision of law. Attendance and participation at meeting public or by members of a governmental body may be b	nis section or another ags by members of the
	§ 44.62.310. Government meetings public	
this section or another provision	ental body of a public entity of the state are open to the public except as otherwise provided by on of law. Attendance and participation at meetings by members of the public or by members of by teleconferencing. Agency materials that are to be considered at the meeting shall be made in the practicable. Except when voice votes are authorized, the vote shall be conducted in alic may know the vote of each person entitled to vote. The vote at a meeting held by to by roll call. This section does not apply to any votes required to be taken to organize a in this subsection.	
(b) If permitted subjects are t meeting and the question of determined by a majority vo	to be discussed at a meeting in executive session, the meeting must first be convened as a public holding an executive session to discuss matters that are listed in (c) of this section shall be to of the governmental body. The motion to convene in executive session must clearly and with the of the purposed executive session without defeating the purpose of addressing the subject in the of the purposed executive session without defeating the purpose of addressing the subject in	

The Organic Nature of

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Bylaws of the Board BB 9323(b) Bylaws MEETING CONDUCT (continued) MEET At a time so designated on the agenda, members of the public also may bring before the The L Beard matters that are not listed on the agenda of a regular meeting. The Board may refe meetin such a matter to the Superintendent or designee or take it under advisement. The matter The board has a responsibility to conduct business in an to all I may be placed on the agenda of a subsequent meeting for action or discussion by the Board. orderly and efficient way. Parlia A person wishing to be heard by the Board shall first be recognized by the president. Board leshe shall then identify himself/herself and proceed to comment as briefly as in The public will have an opportunity to address the Board bylaw ubject permits. ofOr either before or during the Board's consideration of each With Board consent, the president may modify the time allowed for public presentation Quon may rule on the appropriateness of a topic. If the topic would be more suitably agenda item. addressed at a later time, the president may indicate the time and place when it should be Ama presented. Unle The public may bring before the Board matters that are not 5. No oral presentation shall include charges or complaints against any employee of the requ Board, including the Superintendent, regardless of whether or not the employee is listed on the agenda of a regular meeting. pres identified by name or by another reference which tends to identify. Charges or complaints against employees must be submitted to the Board under the provisions of Board policy Abs and administrative regulations related to such complaints. Public comment should be as brief as the subject permits. The (cf. 1312.1 - Complaints Concerning School Personnel) (cf. 9312 - Executive Sessions) dut for The president may modify the time allowed for public No disturbance or willful interruption of any Board meeting shall be permitted. ma shall be grounds for the chair to terminate the Persistence, by an indipresentation or may rule on the appropriateness of a topic privilege of addressing the meeting. The Board may remove disruptive individuals and (cf. order the room cleared if necessary. Pu No disturbance or willful interruption of any Board N meeting shall be permitted. Be



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You have to allow the public to comment on agenda and non-agenda items.



You have to allow all members of the public who want to comment to have an opportunity to comment.



Public comments cannot be mean-spirited.



This petition attacking a Board member could be read at a public board meeting during public comment on non-agenda items.



What can you as a board do to bring "balance to the force" (balance between the need to do business and the obligation to allow for public comment)?



PART 2: FREE SPEECH

FOR ONE OR FOR ALL?

How should you respond if one of your fellow board members regularly goes on expletive filled rants about various school groups and disrespects them to the point where it is hard to sit at the board table for meetings?



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What if the Member Disclosed Confidential Information?

Part 1: Public Comment – The Law

BB 9011 DISCLOSURE OF CONFIDENTIAL INFORMATION Confidential information which is produced for or which comes out during executive sessions of the Board shall not be divulged or released unless a majority of the Board agree to release the information, subject to applicable and the divulged or released unless and confidential records. This bylaw is not intended to cause the withholding law of the Board agree to release the information of the board agree to release the informati	
^{lav} _{of} Any Board member who releases confidential information contrary to the	provisions of this bylaw may be
publicly censured by a majority vote of the Board.	
(cf. <u>4112.6/4212.6/4312.6</u> - Personnel Records)	
(cf. <u>5125</u> - Student Records) (cf. <u>5125</u> - Student Records) Information from executive session shall be released by the President or chairman of the meeting in which the	
Information from executive session shall be released by executive session is held. Any Board member who releases confidential information contrary to the provisions of this bylaw may be	
(cf. <u>4119.23</u> - Unauthorized Release of Confidential Information)	
(cf. <u>9321</u> - Executive Sessions)	
Adopted: 1993	

Part 1: Public Comment - The Law



Book	Policy Manual
	9000 BYLAWS OF THE BOARD
Section	9000 BIDAND

The Board may consider formal action against a member violating the provisions of this policy as allowed by law and including:

- Verbal reprimand from Board in private
- Written reprimand
- Censure

Removal from a Board committee or removal from any Board officer's position.

as a member of the Board when it is duly convened in a meeting or as auto-Board members shall present their concerns and concepts through the process of Board debate and shall be respectful when opinions are shared which differ from their own. Once deliberations are concluded and a final action made by majority vote, that decision constitutes the decision of the Board. No individual member shall take any action to impede effective implementation of a majority decision other than through proper channels of reconsideration or other actions Whenever a Board member believes that another has violated the Code of Ethics or Standards of Conduct, it is incumbent on him or her to bring the issue to the subject member first. If the concern is not resolved, the Board member may then bring the issue to the president of the Board, who shall immediately investigate the allegation including discussing it with the person alleged to have violated the code or standards. If the president believes the allegation is substantiated by credible evidence and is not resolved with the individual member, the president may bring the issue to the full Board for discussion. Before convening into executive session to discuss the allegation, the Individual member shall be given the opportunity to request that the discussion be held in public. If the individual member requests a public discussion, the Board may not convene into executive session to discuss the allegations The Board may consider formal action against a member violating the provisions of this policy as allowed by law and including: Verbal renrimand from Board in private

WILSON VS. HOUSTON COMMUNITY **COLLEGE SYSTEM**

WILSON!

--- WELCOME ---

Wilson vs. Houston Community College System

Board members receive no compensation.

Wilson disagreed with HCC's decision to fund a campus in Qatar.

So, he arranged robocalls to constituents and went on local radio.

HCC excluded him from an executive session.

Wilson then hired a private investigator to find out whether another trustee resided in the district.

And, Wilson set up a website where he published his concerns and named names..

The HCC Board had enough. Wilson was becoming a distraction.

Wilson vs. Houston Community College System

HCC publicly censored Wilson on January 18, 2018. The censure provided that Wilson's conduct was:

"not consistent with the best interests of the College or the Board, and in violation of the Board Bylaws Code of Conduct."

The Board directed Wilson to "immediately cease and desist from all inappropriate conduct" and warned that "any repeat of improper behavior by Mr. Wilson will constitute grounds for further disciplinary action by the Board."

Wilson vs. Houston Community College System

Further, the HCC Board decided that:

(1) Wilson would be ineligible for election to Board officer positions for the 2018 calendar year,

(2) Wilson's requests for access to the funds in his Board account for community affairs would require Board approval.



Passive aggressive Alaskan map of the United States



5th Circuit Decision











Judge Stewart



"The Supreme Court has long stressed the importance of allowing elected officials to speak on matters of public concern. We have echoed this principle in our decisions, emphasizing that "[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."

Decision: HCC Board violated Mr. Wilson's First Amendment free speech rights by censuring him. The Court stated in part "[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance."

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THE UNITED STATES SUPREME COURT

NOVEMBER 2, 2021

"SO, UNDER YOUR VIEW, THE BOARD **COULD SAY EVERYTHING IT SAID IN** THE RESOLUTION, EXCEPT ATTHE END, SAY, 'WE WOULD ADOPT A RESOLUTION **OF CENSURE, BUT FORTHAT CRAZY** SUPREME COURT DECISION IN THE HOUSTON COMMUNITY COLLEGE SYSTEM, WHICH SAID WE CAN'T DO THAT."

QUESTIONS?

