



128 DORRANCE STREET, SUITE 220
PROVIDENCE, RI 02903
401.831.7171 (t)
401.831.7175 (f)
www.riaclu.org

July 13, 2012

Ella Whaley, President
South Kingstown Town Council
Town Hall
180 High Street
PO Box 31
Wakefield, RI 02879

Dear Ms. Whaley:

Our office recently received a complaint from town resident Deborah Bergner about various policies and procedures that are in place to govern South Kingstown Town Council meetings. Because we believe she has raised some legitimate concerns, I am writing to urge that the Town Council take action to revise some of those procedures. Because Ms. Bergner's concerns can be broken down into three separate, if interrelated, issues, I will address them separately.

First, earlier this year a sign was posted in the Town Council chambers barring any texting by attendees at Council meetings. Such a ban cannot, we believe, withstand constitutional scrutiny. According to a news story I read, this ban was first adopted last year in response to a resident's complaint that cell phones were not safe and made her ill. You were also quoted in that story as saying that some people found texting to be distracting. While the Council certainly has the right to prevent disruptive activity in the chambers – such as using cell phones to make or take calls while a meeting is in progress – there is nothing disruptive about texting. In fact, any concerns about either the health of the public or distraction to the Council are undermined by the acknowledgement in the news article that members of the media, the police and the Town Clerk are all allowed to text during Council meetings.

In any event, texting is certainly no more distracting than a person taking notes, for example – something that we assume the Council would never think to ban. Indeed, because texting – like taking notes – constitutes a pure exercise of freedom of speech, a ban on this activity amounts to a serious intrusion on the First Amendment rights of attendees. It is now common practice for members of the media and others to "tweet" during the meetings of public bodies. This is a perfectly legitimate way for an attendee to inform interested members of the public what is happening at a meeting, yet it is prohibited by the "no texting" policy.

We further note that the state's Open Meetings Act has been interpreted to allow members of the public to record meetings of public bodies. We believe this right under the Act would logically extend to texting as well. Ms. Bergner informs us that, as of late, the ban does not appear to be strictly enforced, but in light of the formal policy that has been in place regarding this activity, we believe it is incumbent upon the Town Council to formally rescind this prohibition and make clear to members of the public that texting is, in fact, allowed.

Secondly, Ms. Bergner brought to our attention a colloquy that took place at the Town Council's February 27th meeting. At that meeting, while Ms. Bergner was addressing the Council, she mentioned the name of Council member O'Neill. At that point, you asked her to "not mention any names" and said that there was a "rule that we don't really use the town council member's name." No such prohibition exists in the Town Council's written "Rules of Conduct," nor do we believe such a rule could constitutionally be enforced. In fact, some years ago, our organization obtained a court order against a Providence School Board policy that had barred members of the general public from mentioning the name of any person during the public comment portion of school board meetings.

In many instances, it is difficult, if not impossible, to separate discussion of a town matter from the employees or officials who are involved in it. To bar members of the public from specifically naming members of the Town Council or town employees is thus a serious intrusion on the free speech rights of residents at these meetings. Like the texting ban, the actual enforcement of this unwritten policy appears sporadic, according to Ms. Bergner. Again, though, we believe the Town Council should make clear, particularly in light of any confusion that may have been generated in the past, that no such restriction on "naming names" exists.

That leads us to Ms. Bergner's third concern, involving new "rules of decorum" that the Town Council agreed to abide by a few months ago. As best as we can tell, those rules have not been committed to writing, so it is difficult to fully apprehend exactly what they cover. According to a news story, the rules are designed to support such amorphous conduct as promoting positive body language and refraining from personal attacks. Although these rules of decorum may have been intended to address the activities of the Town Council members themselves, the Rules of Conduct subject members of the public to the same rules applicable to members of the Council. To the extent that the "rules of decorum" potentially ban members of the public from verbally making any undefined "personal attacks," this too raises significant constitutional concerns. It is therefore critical that any "rules of decorum" affecting the public be clear, explicit and in writing.

In light of all these issues, we respectfully request that the Town Council revise and clarify its various policies and procedures in these three respects in order to ensure that the free speech rights of town residents are respected.

Thank you in advance for your attention to this request, and I look forward to hearing back from you about it.

Sincerely,

Steven Brown
Executive Director

cc: Town Council Members
Stephen Alfred
Deborah Bergner