

August 18, 2005

Frederick G. Tobin
Gordon Tobin & Read
300 Centerville Road, Suite 100E
Warwick, RI 02886

Dear Mr. Tobin:

I am writing you in your capacity as solicitor for the Coventry School Committee. According to an article in today's *Providence Journal*, you have advised the Committee that members of the public may not use the "public comment" portion of School Committee meetings to discuss "personnel, litigation or negotiation." The issue apparently came to a head most recently when a resident wanted to talk about the girls high school's cross-country coach.

You are quoted as indicating that any discussion of personnel matters was limited "not just by this committee's rules, but by state law." However, we believe your comment about state law is incorrect, and implementation of the school committee's policy itself is severely constrained by First Amendment considerations.

Regarding state law, the Attorney General opinion you cite simply does not apply. Nothing in that opinion purports to claim that state law bars members of the public from speaking on any matter during a "public comment" session. To the contrary, the opinion notes that the Open Meetings Act is "silent on the issue of the public comment portion of an open meeting." Rather, the opinion is clear in limiting its reach to circumstances *where a public body engages in a colloquy with a member of the audience*.

As for the school committee's current policy barring members of the public from discussing anything relating to "personnel, litigation or negotiation," we believe such a policy clearly runs afoul of the First Amendment rights of attendees. In fact, in the past few years, our Affiliate has successfully challenged two very similar school district policies. In 2001, we obtained a restraining order in R.I. Superior Court against a Providence School Board policy barring members of the general public from mentioning the name of any person during the public comment portion of school board meetings. Shortly thereafter, we challenged a Tiverton School Committee policy barring the public from orally initiating "charges" or "complaints" against school employees during the public comment period; the School Committee rescinded the policy as a result.

The favorable resolution of those cases was no surprise, for courts have routinely struck down these types of restrictions as a violation of the public's First Amendment rights. See, e.g., *Bach v. School Bd. of City of Virginia Beach*, 139 F.Supp.2d 738 (E.D. Va. 2001)(striking down school board by-law prohibiting "personal attacks" during public comment period of school board meetings); *Leventhal v. Vista Unified School District*, 973 F.Supp. 951 (S.D. Cal. 1997)(striking down school board by-law prohibiting criticism of district employees during public comment segment of public meetings); *Baca v. Moreno Valley Unified School District*, 936 F.Supp. 719 (C.D. Cal. 1996)(striking down school board policy barring, at open sessions of school board meetings, comments which included "charges" or "complaints" against district employees, regardless of whether employee was identified).

For these reasons, we request that you advise the School Committee to revise its current policy so that members of the public may, during the "public comment" portion of a meeting, speak on any matter in the purview of the public body, even if it involves "personnel, litigation or negotiation."

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

Sincerely,

Steven Brown
Executive Director

cc: Town Council Members