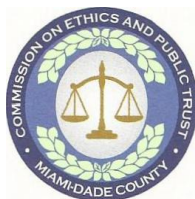


MIAMI-DADE COMMISSION ON ETHICS AND PUBLIC TRUST

COMMISSIONERS

Dr. Judith Bernier, CHAIR
Wifredo “Willy” Gort, VICE CHAIR
Nelson C. Bellido Esq.
Dava J. Tunis, Esq.
Lourdes B. Fernandez, Esq.



EXECUTIVE STAFF

Jose J. Arrojo
EXECUTIVE DIRECTOR
Radia Turay
ADVOCATE
Loressa Felix
GENERAL COUNSEL

February 21, 2024

Via Facsimile Only:

Joseph.Geller@gmlaw.com

Joseph Geller, Esq.
Town Attorney
9665 Bay Harbor Terrace
Bay Harbor Islands, Florida 33154

RE: INQ 2024-37, Citizens' Bill of Rights, Right to be Heard Provision

Dear Mr. Geller:

Thank you for contacting the Miami-Dade County Commission on Ethics and Public Trust and conferring with us regarding the application of Section (A) 5. of the Citizens' Bill of Right, Right to be Heard, as contained in the Miami-Dade Charter.

Issue:

Whether the Town of Bay Harbor Islands' public meeting procedure, which allows citizens up to three (3) minutes of public comment to address any matter within the board's jurisdiction and then affords an additional opportunity to comment anew during the "consent" agenda portion of the meeting, meets the requirements imposed by the County Charter's Citizens' Bill of Right, Right to be Heard Provision.

Facts:

The Town of Bay Harbor Islands provides citizens with at least two opportunities to address the board at each commission meeting.

The first occasion occurs during "public comment" portion of the agenda. Persons are allowed three (3) minutes during public comment during which they may address any matter that is within the jurisdiction of the board.

The Town's also has a "consent" portion in its agenda. Included in this section are matters involving no more than a ministerial act, approval of minutes, ceremonial proclamations, and other items expected to be voted upon without board member discussion.

While consent agenda items are expected to be voted upon without discussion and expediently grouped together for this purpose, in addition to ministerial acts and proclamations, substantive items, including significant procurement matters may also be included. Persons have been allowed at least two (2) additional minutes to address consent agenda items.

Consequently, in total, citizen speakers have at least five (5) minutes to address the board during each meeting.

Discussion:

The Ethics Commission has opined that that the County Home Rule Charters' Bill of Rights, Right to be Heard provision must be liberally construed so that a citizen is afforded the opportunity to address a municipal board on a matter within that board's jurisdiction whether or not the matter is on the board's official agenda. ¹

More specifically, the Ethics Commission has previously opined that local boards are compliant with the Citizens' Bill of Rights if they permit persons to speak on any public hearing agenda item, a reasonable opportunity to be heard on non-public hearing items, and a right to be heard on any matter within the board's jurisdiction, whether it is an agenda item or not. ²

Beyond these pronouncements, the Ethics Commission has also repeatedly recognized that local governments enjoy great discretion on how they may run their public meetings and thus a municipality may impose reasonable time, place, and manner restrictions on citizen speakers. Also, notably, the Ethics Commission has not interpreted the Citizens' Bill of Rights to impose on local boards the obligation to afford every citizen the opportunity to be heard on non-agenda matters within the board's jurisdiction at every public meeting. ³

Moreover, while the Ethics Commission is not authorized to interpret or enforce state laws, the interplay between s. 286.0114, Florida Statutes, and the local Citizens' Bill of Rights, Right to be Heard provision is evident. That section also affords citizens a reasonable opportunity to be heard on a proposition before a municipal board prior to the board taking official action. The plain language of that section limits the right to "action items" and likewise recognizes the local government's ability to impose reasonable time, place, and manner restrictions.

Accordingly, even if action items are grouped together on a consent agenda, citizens must be afforded some reasonable opportunity to be heard.

Conclusion:

To your specific query, whether the Town of Bay Harbor Islands' procedure, which provides citizens up to three (3) minutes during "public comment" to address items within the board's jurisdiction and then additionally affords the opportunity to comment again during the "consent"

¹ RQO 22-03; *Herbits v. City of Miami*, 207 So. 3d, 274, 284 (Fla. 3 DCA 2016) (*dicta*)

² RQO 05-60

³ RQO 22-03

agenda portion of the meeting, meets the requirements imposed by the Citizens' Bill of Right, kindly be advised as follows:

Based on the facts relayed and interpreting only the County Charter's Citizens' Bill of Rights, Right to be Heard Provision, and not related state laws, it would appear that affording a citizen two opportunities to address your board during one meeting, and a total of at least five (5) minutes between public comment and consent agenda would be compliant with the rights afforded to public speakers by the Charter provision.

The only caveat to this proposition is that if a number of substantive items, including significant procurement matters, are grouped in a consent agenda with ministerial or ceremonial items, then the board may have to offer additional reasonable opportunity to be heard on these items. How much more time beyond two (2) minutes will depend on the number of substantive items on the consent agenda and the complexity or significance of the items.

This latter calculation is best left to the discretion of the local board. As long as the time afforded is reasonable, allows a citizen speaker to effectively address the item, and does not act as an actual bar on the public speech, then the process will be compliant with the Citizens' Bill of Rights.

Any further analysis would require this agency to interpret and apply state statutes, and this is outside of the scope of this agency's authority.

We hope that this opinion is of assistance, and we remain available to discuss any matters addressed in this letter, if necessary, at your convenience.

Sincerely,



Jose J. Arrojo
Executive Director

cc: All Commission on Ethics Attorneys

INQs are informal ethics opinions provided by the legal staff after being reviewed and approved by the Executive Director. INQs deal with opinions previously addressed in public session by the Ethics Commission or within the plain meaning of the County Ethics Code. RQOs are opinions provided by the Miami-Dade Commission on Ethics and Public Trust when the subject matter is of great public importance or where there is insufficient precedent. While these are informal opinions, covered parties that act contrary to the opinion may be referred to the Advocate for preliminary review or investigation and may be subject to a formal Complaint filed with the Commission on Ethics and Public Trust.