

N.D.A.G. Letter to Mushik (April 25, 1990)

April 25, 1990

Honorable Corliss Mushik
State Senator
District 34
P.O. Box 188
608 Third Street NW
Mandan, ND 58554

Dear Senator Mushik:

Thank you for your April 11, 1990, letter inquiring whether the presiding officer of a publicly elected governmental body has the authority to determine who may speak and what topic may be addressed at a meeting of that particular body.

North Dakota law does not establish rules of procedure to be followed at meetings of public bodies. In some cases, the Legislature has specifically authorized the public body in question to adopt its own rules of procedure. See, e.g., N.D.C.C. § 40-06-05 (governing bodies of municipalities shall determine their rules of procedure). In most cases, however, statutes concerning procedural rules are nonexistent.

Furthermore, the North Dakota open meetings law provides no guidance. The open meetings law states that all meetings of public bodies shall be open to the public. N.D.C.C. § 44-04-19. It does not address public participation in those meetings or the manner in which those meetings are to be conducted. See id.

The general rule appears to be that if a public body has not adopted rules of procedure and no statutory rules of procedure are applicable, then generally accepted rules of parliamentary procedure govern. McCormick v. Board of Education of Hobbs Municipal School District No. 16, 55 N.M. 648, 274 P.2d 299, 307-08 (N.M. 1954). In determining proper parliamentary procedure, it is permissible to resort to Robert's Rules of Order, which is the widely accepted codification of parliamentary law. Lecht v. Stewart, 483 A.2d 1079, 1081 (R.I. 1984).

Assuming the public body in question has neither adopted its own rules of procedure nor any other codification of rules, I consulted H. Robert, Robert's Rules of Order Newly Revised (S. Corbin Robert ed. 1981) [hereinafter Robert's Rules of Order], concerning the issues outlined in your letter. I could not find any discussion concerning preparation of the public body's agenda. Thus, I cannot provide you with any guidance or legal opinion concerning the authority of a presiding officer to determine what topics may be discussed where prior request is made by a non-board member that a particular subject be discussed.

However, under the heading of "New Business," Robert's Rules of Order allows members of the public body to introduce new items of business. See Robert's Rules of Order at 305-06.

After unfinished business and general orders have been disposed of, the chair asks, "Is there any new business?" Members can then introduce new items of business So long as members are reasonably prompt in claiming the floor, the chair cannot prevent the making of legitimate motions or deprive members of the right to introduce legitimate business By hurrying through the Proceedings.

Id.

Robert's Rules of Order does not discuss the manner in which members of the public may bring matters to the attention of a public body. However, members of that public body have the opportunity to introduce new items of business. Thus, in a situation in which the presiding officer of a public body has not been willing to place an item on the agenda and Robert's Rules of Order are applicable, that item may be discussed by a member of the body at the time of the meeting when new business is discussed.

I am sorry that I cannot be definite in my response to you. The lack of statutory guidance in this area does not allow me to be very specific concerning the rules of procedure of a public body. Hopefully, this general discussion and the reference to Robert's Rules of Order will be helpful to you and your constituent.

Sincerely,

Nicholas J. Spaeth

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