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Sussex Council ends personal criticism ban

GEORGETOWN -- After a complaint from the American Civil Liberties Union, Sussex County Council has struck down a policy barring personal criticism of county officials by speakers at its meetings.

The council unanimously approved a change to its rules Tuesday, removing the section that the ACLU called unconstitutional.

But it also gave the council president the authority to halt a speaker who becomes "willfully and seriously disruptive" -- a power President Mike Vincent used at the end of Tuesday's meeting to silence an outspoken council critic who began shouting.

County Attorney Everett Moore said the changes were based on his firm's review of case law, and in some cases the phrasing was taken from current cases. "We're comfortable with these changes," he said.

The ACLU had contended that the 2009 policy violated the law because it discriminated against certain viewpoints. Before then, the county did not have a policy governing speakers at council meetings.

The organization applauded the move. "I'm happy they made the change," said ACLU of Delaware attorney Richard Morse. "I think it complies with the First Amendment."

The section stricken Tuesday had barred criticism related to personnel decisions or "matters ... that are personal in nature." It did not prohibit residents from criticizing county decisions or council members' actions.

Delaware's Freedom of Information Act does not require a public body to allow public comment during meetings.

The ACLU cited a 2005 federal court ruling in New Jersey that struck down a school board bylaw barring statements that were "personally directed."

At the end of Tuesday's meeting, Greenwood resident Dan Kramer -- who has not spoken except at public hearings for more than two years because of the anti-criticism rule -- approached the podium to speak.

He insisted that the council's rule requiring residents to provide the subject on which they wanted to speak also violated the law.

"You cannot ask for a subject," he said. "We will fight this. ... If you want a lawsuit, I will give you a lawsuit."

"You are out of order, sir," Vincent said, calling on Moore for a ruling and repeating himself several times as Kramer continued raising his voice.

"You don't want to be called a turkey, then don't act like it," Kramer shouted.

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