

# Palouse gets refresher in free speech

State warns mayor against limiting comments during public meetings in town

By David Johnson of the Tribune

Tuesday, March 31, 2009

PALOUSE - After receiving some unsolicited advice from Washington state's ombudsman on open government, Mayor Michael Echanove on Monday declared a resumption of free speech at city council meetings.

"Someone can always come in and say the mayor is a bonehead," said Echanove, who's been at the helm of this Whitman County town since 2001. "That doesn't bother me in the least."

But prior to receiving a letter last week from Tim Ford, assistant Washington attorney general for government accountability, Echanove had protected paid city employees from public criticism.

"Some years ago," the mayor explained, "a person took off on an employee and was going at it. Afterwards, I was told that I should have clamped down on that."

But Ford, who could not be reached for comment, wrote in his letter that Echanove's ban has serious constitutional implications.

"The ability of citizens to voice their opinions about the performance of the public employees and officials who serve the public is one of the cornerstones of a free and accountable government," Ford wrote in the letter. "Particular criticism of government conduct may irritate the city, but such criticism is protected by the First Amendment of the U.S. Constitution, and ... the Washington Constitution."

Echanove said he plans to ask members of the city's policy and administration committee to review Ford's letter. But from his perspective, Echanove said, he's ready to accept Ford's advice, while at the same time asking citizens to maintain a level of civility in their criticism of paid employees.

Ford wrote that his letter was in response to a letter he recently received from the Boomerang newspaper, questioning the city's policy of prohibiting public comment on issues regarding city staff.

"So I stand corrected," Echanove said. "People can now bring any topic up in the open forum, including personnel."

Open forum, the mayor explained, was started a number of years ago as a means for citizens to bring up issues that weren't, or should be, on the council's agenda. "It's where anyone on the planet can come in and talk about anything they want," Echanove said. "I'm the one that put that there, just to have open communication."

Ford wrote any municipality that deliberately allows general public comment during its meetings has, in essence, created a public forum for constitutionally protected free speech. "The city may not restrict speech it merely dislikes," Ford wrote. But the city may limit comment in a "neutral manner" by, for example, setting time limits.

People who become disruptive may be removed from the meeting under the state's open public meetings act, Ford wrote. And cities may adopt a policy that prohibits personal attacks such as insults, if they lead to disruption. But personal insults, Ford wrote, are not the same as insulting criticism. Moreover, case law prohibits cities from banning public comment on a particular topic.

Federal case law also underscores, Ford wrote, that the U.S. Constitution reflects a "profound national commitment" to the principle that debate on public issues must be uninhibited, robust and wide open. Such debate may also include "vehement, caustic, and sometimes unpleasantly sharp attacks" on government and public officials, Ford wrote.

"If the city allows a general public comment period at its meetings but prohibits comment on personnel issues," Ford wrote, "then the prohibition should be repealed."

Echanove said he has taken the legal advice to heart and wants to keep the open forum. "I like people to walk through the door and talk about anything. So right now I'd say anything is fair game."

---

*Johnson may be contacted at [djohnson@lmtribune.com](mailto:djohnson@lmtribune.com) or (208) 883-0564.*