



February 10, 2009

Commissioner Dennis Fink
Board Chair
St. Louis County Board
Room 208
100 N. 5th Avenue West
Duluth, MN 55802

VIA E-Mail

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Dear Commissioner Fink,

The ACLU-MN was disappointed to learn that the St. Louis County Board is considering a prohibition on the recording of public meetings by private individuals attending those meetings. According to recent news reports, the ban is being considered in response to the dissemination of a recording of a recent work session in which some Board members expressed opposition to selling tax forfeited land to local Indian tribes. Because we believe that such a ban would violate both the Minnesota Open Meeting law and the state and federal constitutional rights to free speech, we respectfully urge you to continue allowing meeting attendees to record all meetings open to the public.

In addition to ensuring that the public can present its views to the public body, the Minnesota Open Meeting Law (OML) is intended to prohibit government actions from being taken in secret and to protect the public's right to be fully informed. Prior Lake American v. Mader, 642 N.W.2d 729 (Minn. 2002). The OML protects access to government meetings for both the general public and the news media. Channel 10, Inc. v. Independent School Dist. No. 709, 215 N.W.2d 814 (Minn. 1974). Moreover, the rights of the media and members of the general public are coextensive. *Id.* Implicit in the public's right to attend government meetings is the right to record those meetings. Although there do not appear to be any Minnesota cases that explicitly recognize that right, the right record public meetings and disseminate those recordings has been recognized for 37 years pursuant to a Minnesota Attorney General Advisory Opinion issued in 1972. Op. Atty. Gen. 63a-5, Dec. 4, 1972. Open Meeting Laws in other states have also been construed to include the right of individuals to record meetings. Courts in

New Jersey, California and Rhode Island have all held that their state's open meeting laws encompass the right to attend and record meetings.¹

In addition to violating Minnesota's Open Meeting Law, we believe that a ban in these circumstances would also violate the right to free speech protected by the U.S. and Minnesota Constitutions. First, the ban appears to be an effort to silence critics of the St. Louis County Board. Specifically, a group known as We Are Watching regularly records meetings and posts them on their website, including the meeting where the discussion of selling land to Indian tribes was discussed. A portion of that recording is alleged to have been disseminated in a manner that was intended to portray individual Board members in a bad light. Although We Are Watching denies editing the recording, it is of no account because selective editing and disseminating recordings of public meetings is expressive activity that is clearly protected by the First Amendment. Indeed, it is an activity that members of the news media do on a daily basis. Because the ban is aimed at shutting down an avenue of criticism by private individuals, it violates the constitutional right to free speech of those critics.

Second, the restriction could not satisfy even the lowest level of constitutional scrutiny for speech restrictions because it is not reasonable. Because regular St. Louis County board meetings are currently broadcast on public access television, it is clear that there is nothing inherently problematic about having meetings recorded. According to news accounts, the ban would exempt members of the media from the ban, suggesting that the problem is it is not the act of recording meetings, but rather, the identity of the recorder. There does not appear to be a reasonable basis for allowing recording by some, but not all, meeting attendees. As the U.S. Supreme Court has long recognized, the First Amendment does not grant reporters a right of access to information that is greater than the rights of the general public.²

While it is not reasonable to ban recordings of public meetings, we recognize that there may be circumstances where the physical act of recording may be disruptive. The Board clearly has the right to enforce decorum at its meetings to ensure that their work is not disrupted; however, there are ample means of preventing the disruption of meetings without taking the extreme step of banning recordings by private individuals. We are confident that the Board's current rules of decorum are sufficient to address any disruptions that may be caused by individuals who make excessive or disruptive noise at meetings. We would be

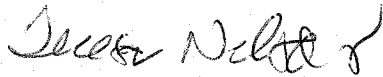
¹ Sudol v. Borough of North Arlington, 348 A.2d 216 (Ch.Div.1975); Nevens v. City of Chino, 44 Cal.Rptr. 50 (D.Ct.App.1965); Belcher v. Mansi, 569 F.Supp. 379 (D. Rhode Island 1983).

² Houchins v. KQED, Inc., 438 U.S. 1, 10-12, 16, (1978); Nixon v. Warner Communications, Inc., 435 U.S. 589, 609-10 (1978); Pell v. Procunier, 417 U.S. 817, 833-35, (1972).

happy to discuss this further with the Board if you feel your current rules are inadequate to deal with meeting disruptions.

Because we believe that a ban on recording public meetings by private individuals is both illegal and unconstitutional, we respectfully urge you to continue allowing attendees to record meetings.

Sincerely,



Teresa J. Nelson
Legal Counsel

c: Commissioner Steve O'Neil
Commissioner Chris Dahlberg
Commissioner Mike Forsman
Commissioner Peg Sweeney
Commissioner Keith Nelson
Commissioner Steve Raukar
St. Louis County Attorney Melanie Ford