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Open Meetings

The Sunshine Act

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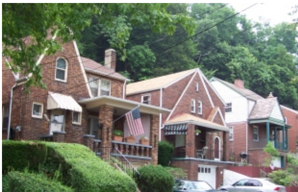

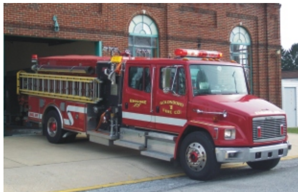

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Open Meetings

The Sunshine Act

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I. Open Meetings: The Sunshine Act

State legislatures across the country have adopted laws requiring that certain meetings be open to the public. These laws have been symbolically termed Sunshine Laws. There are numerous advantages to having such statutes. Sunshine Laws help curtail misbehavior by government officials, educate the public through greater press coverage of government activities and provide public scrutiny to governmental decision-making. Public officials also are able to gain a better understanding of public opinion on the issues. Moreover, open meetings can enhance public faith in the political process.

Overview of Sunshine Act

The Pennsylvania Sunshine Act requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings. The Act covers all such actions by municipal governing bodies, committees of these governing bodies and municipal boards and commissions. The General Assembly, state executive branch agencies, school boards, authorities, boards of public colleges and universities, and governing boards of nonprofit corporations that have legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education also are covered by the Sunshine Act. Official actions include making recommendations, establishment of policy, decisions on agency business and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

The current Sunshine Act took effect on January 3, 1987. This law replaces the old Open Meetings Laws of 1957 and 1974. Under the old law, public agencies were required to hold open meetings only if votes were taken or official policy adopted. This led to the frequent abuse of discussing and deciding issues in so-called "workshop" sessions, with the official public meetings being relegated to conducting formal votes on issues already decided in advance. The current Act requires that any deliberations leading up to official actions also take place at public meetings. Municipal governing bodies have no authority, either under the municipal codes or the Sunshine Act, to conduct "workshop" sessions.[1]

References

1. *Paciotti v. Corcoran,* 95 Lackawanna Jur. 6, 1994.

Agencies

The "agency" is defined as the governing body, and all committees authorized by the body to take official action and render advice on agency business. This includes state agencies as well as political subdivisions, school districts and municipal authorities. As defined in the Statutory Construction Act, political subdivision includes any county, city, borough, incorporated town, township, school district, vocational school district and county institution district.[1] The term agency includes the political subdivision and all its constituent boards and commissions. All municipal governing bodies and their committees are covered by the Act. But where a committee is appointed by the governing body, but none of its members are members of the governing body, it does not qualify as a committee for purposes of the Act.[2] In this case, Reading City Council had appointed an advisory committee to evaluate private ambulance service contractors. The members of the committee were three members of the fire department and an assistant city solicitor. The court ruled that because no members of council served on the committee, it could not be considered a committee of council. In a similar ruling, a committee consisting of the township manager, engineer and solicitor appointed by the board of supervisors was found not to be a committee of the board, and thus not an agency under the Sunshine Act.[3] The committee

reviewed a development plan and met with the developer to discuss compliance with township ordinances in closed sessions. Likewise, in a decision involving a trial court nominating commission, the court held the commission was not an agency under the Sunshine Act because it was advisory, established for a limited purpose, lacked authority to make binding recommendations to the Governor, and thus lacked the essential characteristics of an agency.[4] This decision also established that an individual, the Governor in this case, does not constitute an agency under the Sunshine Act.

The term "agency" also includes the governing board of any nonprofit corporation which by a mutually binding legal written agreement with a community college or State-aided, State-owned or State-related institution of higher education is granted legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education.[5]

In another case, an economic development corporation was held to be an agency within the meaning of the Sunshine Act even though it was a private nonprofit corporation.[6] The court said that for the purpose of the Act, an agency was what the legislature defined as an agency. The legislature had enacted a law making the nonprofit corporation that leased rental property to the Commonwealth subject to the Sunshine Act. A county court determined a nonprofit organization assisting with health, education and social support service to benefit at-risk youth was not an agency under the Sunshine Act.[7] The organization was not performing an essential governmental function nor empowered to take official action to achieve those goals.

References

1. *Paciotti v. Corcoran,* 95 Lackawanna Jur. 6, 1994.
2. *Gowombeck v. City of Reading,* 48 D.&C.3d 324, C.P. Berks Co.
3. *Alesander v. Board of Supervisors of East Whiteland Township,* 41 Chest Co. Rep. 29, 1992.
4. *Ristau v. Casey,* 647 A.2d 642, Pa.Cmwlth., 1994.
5. 65 Pa.C.S.A. § 701 2006
6. *Harristown Development Corporation v. Commonwealth,* Department of General Services, 614 A.2d 1128, 532 Pa.45, 1992.
7. *Nesser v. Cities in Schools in Fayette County,* 17D.&C.4th 242, 1992.

Meetings

The Sunshine Act defines a "meeting" as any prearranged gathering of an agency attended by a quorum of members held for the purpose of deliberating agency business or taking official action. "Deliberation" means the discussion of agency business held for the purpose of making a decision. "Agency business," in turn, means framing or enacting any law or policy entering into a contract or adjudicating rights, duties and responsibilities. Administrative action is excluded from the definition of agency business.

There have been several court decisions related to these definitions found in the Sunshine Act. A court ruled unofficial gatherings of unnamed legislators did not constitute "meetings" subject to the Sunshine Law. The alleged dates of the meetings predated the establishment of a conference committee. In effect, the agency whose business was discussed, the conference committee, did not exist at the time of the meetings.[1] In another case involving the state legislature, the action of the House Rules Committee in changing the House Rules in accordance with a House Resolution adopted previously in open session was held not to constitute a violation of the Sunshine Act. The activity of the Rules Committee was found to be ministerial action to carry out the decision made by the full House.[2]

However, a conference to discuss a zoning ordinance attended by a quorum of a board of supervisors constituted "deliberation of agency business" and violated the Sunshine Law.[3] In this case, a newly appointed member of the board of supervisors felt himself unprepared for consideration of a proposed zoning change on the agenda for that evening's meeting. In the afternoon, he met with the developer proposing the change and one of the other two supervisors for a review of the proposal. The court cited a prior decision saying that township

supervisors are not restricted to information furnished at public meetings. They have the right to study, investigate, discuss and argue problems and issues prior to the public meeting at which they vote. Supervisors are not restricted to communicating with citizens represented; they can talk with interested parties, including applicants for zoning changes.[4] The activities at this afternoon meeting clearly amounted to deliberation on the proposed zoning change, which as a pending ordinance constituted agency business. The presence of the second supervisor in this instance brought the conference under the definition of a meeting in the Sunshine Act because the group now consisted of a quorum of the agency's members assembled for the purpose of deliberating on agency business. This gathering constituted a meeting in violation of the Sunshine Act.

In another case, the court drew a distinction between deliberations and discussion. The court ruled the informal discussion of a budget by school board members did not violate the Sunshine Law.[5] There was no evidence that clearly established that budget issues were discussed by some school board members during a brief recess in a school board meeting. There was no indication that any gathering of members included more than a quorum of the board. The court held a school board member is not prohibited by the Sunshine Act from discussing and debating informally with others including school board members, the pros and cons of particular proposals and matters that may be on the board's agenda. A member's activities in inquiring, questioning and learning about issues are not restricted to public meetings.

In another school district case, a reorganization plan resulting in 20 furloughs was challenged on the basis of the violation of the Sunshine Act.[6] The decision to accept the reorganization plan was made by the school board at a public meeting on June 13, 1988, following a long series of meetings with the teaching staff and the public. The only meetings alleged to have violated the Sunshine Act occurred January 19 and January 25. The January 19 meeting was an executive session to discuss personnel matters with a quorum present. There was no evidence of a quorum at the January 25 meeting and no indication that the reorganization plan was discussed other than an explanation by the superintendent of how he intended to meet with the affected staff. The court ruled that people bringing the action failed to meet their burden of proof that deliberation actually occurred.

The Public Advocate contended a city gas commission had used a "script" at a meeting, demonstrating the agency had already discussed and resolved ratemaking issues prior to a public meeting. However, the court ruled the document used by the commission was an agenda and not a script.[7] The document merely contained proposed statements and resolutions which any chair would prepare in advance of a meeting. The Public Advocate failed to meet the burden of proof the commission had private deliberations before the public meeting.

The Sunshine Act requires official actions to be taken at a public meeting. In a case involving a zoning hearing board, landowners challenged a board's refusal to permit a garage on residential property. The board members deliberated and voted on the issue at a public meeting. The court held that the fact that the written decision was not voted on and approved at a public meeting was not important, because the formal action required to be taken at the public meeting under the Sunshine Act was the actual vote on the decision.[8] In a second zoning hearing board case, Commonwealth Court reiterated that the important occurrence is the voice vote of the board at a public meeting.[9] The writing of the decision is not considered a formal action and need not be issued during a public meeting. Where a borough council voted to demote a police chief at a public meeting, the fact that charges against him were not formally voted on at the meeting was found to be of no consequence. It was clear beyond doubt that borough council knew the charges upon which their action against the police chief was based.[10]

A township planning commission violated the Sunshine Act by holding a closed meeting at the chair's home to review proposed changes in the township's ordinance regulating junkyards.[11] The planning commission had the power to make recommendations to the township on a broad range of land use matters. The planning commission's submission of a recommendation to the board of supervisors constituted official action. The planning commission's formulation of a proposal was agency business because it involved framing or preparing laws or policy. The discussion by a majority of the planning commission's members at a closed meeting constituted deliberation.

Commonwealth Court determined a school board did not violate the Sunshine Act when it voted in executive session to narrow the field of candidates for school superintendent.[12] Just because a vote is taken in executive session does not mean it is an official action. When an agency eliminates candidates in an executive session through a "straw vote," that vote is not an official action under the Sunshine Act, but is part of that discussion and deliberation authorized to be conducted at an executive session. The vote that constituted official action was the one committing the board to hire a specific person as superintendent. A different conclusion was reached where a school board failed to vote in a public meeting, on increasing the salary and benefits of the school superintendent.[13] The Sunshine Act allows an agency to discuss employment matters in a private session, but the final vote must be taken at a public meeting. The term "official action" under the Sunshine Act includes decisions committing a school board to a particular course of action, in this case establishing salary and benefits for the superintendent.

A quorum must be present for a meeting to violate the Sunshine Act. A private meeting was held jointly by members of a township board of supervisors and a board of directors of a transportation authority, but the participants constituted less than a quorum of either board. The private meeting clearly included a discussion of agency business related to the proper size of a proposed transportation development district. However, since the private meeting was not attended by a quorum of either public agency, the meeting did not violate the open meeting provisions of the Sunshine Act.[14] The agencies later made final decisions on the issue at properly advertised public meetings. In another case, township supervisors held a private meeting with an attorney to discuss a lawsuit filed by a former township employee. No violation of the Sunshine Act occurred because a quorum of the supervisors was not present at the meeting.[15]

The Pennsylvania Supreme Court has ruled the State Milk Marketing Board did not violate the Sunshine Act when it voted on a rate order by telephone conference call.[16] Two of the three members of the board were physically absent from the meeting but participated using speaker phones. The court held a quorum of the board either attended or participated in the official action. This satisfied the requirements of the Sunshine Act. The court concluded a quorum of members can consist of members not physically present at the meeting, but who nonetheless participate in the meeting and that such a quorum can take official action, provided that both present and absent members can communicate with each other. It is uncertain if this ruling also applies to municipal boards and zoning hearing boards.

In a zoning hearing board case, the Pennsylvania Supreme Court ruled that, because of the nature and the sensitivity of zoning board deliberations, certain proceedings by a township zoning hearing board are exempt from the open meeting provisions of the Sunshine Act, and can be held in private. The Court concluded that a zoning hearing board is, in many respects, "an agency characterized predominantly by judicial characteristics and functions" and thus "it is particularly appropriate for zoning boards to deliberate privately."[17]

References

1. *Pennsylvania Legislative Correspondents' Association v. Senate of Pennsylvania,* 537 A.2d 96, 113 Pa.Cmwlth. 367, 1988, affirmed 551 A.2d 211, 520 Pa. 82, 1988.
2. *Common Cause/Pennsvlvania v. Itkin,* 635 A.2d 1113, 161 Pa.Cmwlth. 15, 1993.
3. *Ackerman v. Upper Mt. Bethel Township,* 567 A.2d 1116, 130 Pa.Cmwlth. 254, 1989.
4. Belle Vernon Area Concerned Citizens Appeal, 487 A.2d 490, 87 Pa.Cmwlth. 474, at 481, 1985, citing Palm v. Center Township, 415 A.2d 990, 52 Pa.Cmwlth. 192, at 195, 1980.
5. *Conners v. West Greene School District,* 569 A.2d 978, 131 Pa.Cmwlth. 95, 1989, appeal denied 581 A.2d 574, 525 Pa. 649.
6. *Bradford Area Education Association v. Bradford Area School District,* 572 A.2d 1314, 132 Pa.Cmwlth. 385, 1990.
7. *Public Advocate v. Philadelphia Gas Commission,* 637 A. 2d 676, 161 Pa.Cmwlth. 428, 1994.
8. *Piecknick v. South Strabane Township Zoning Hearing Board,* 607 A.2d 829, 147 Pa.Cmwlth. 308, 1992.
9. *Bruno v. Zoning of Adjustment of City of Philadelphia,* 664 A.2d 1077, Pa.Cmwlth., 1995.
10. In re Blystone, 600 A.2d 672, 144 Pa.Cmwlth. 27, 1991; appeal denied 626 A.2d 1159.
11. *Moore v. Township of Raccoon,* 625 A.2d 737, 155 Pa.Cmwlth. 529, 1993.
12. *The Morning Call, Inc. v. Board of School Directors of Southern Lehigh School District*, 642 A.2d 619, Pa.Cmwlth., 1994.

13. *Preston v. Saucon Valley School District,* 666 A.2d 1120, Pa.Cmwlth., 1995.
14. *Frazer Concerned Citizens v. Frazer Township,* 140 P.L.J. 342, 1992.
15. *Muncy Creek Township Citizens Committee v. Shipman,* 573 A.2d 662, Pa.Cmwlth., 1990.
16. *Babac v. Pennsylvania Milk Marketing Board,* 613 A.2d 551, 531 Pa. 391, 1992; appeal dismissed 619 A.2d 1062, 533 Pa.
17. *Kennedy v. Upper Milford Township Zoning Hearing Board,* 834 A.2d 1104, 2003.

Administrative Action

The Sunshine Law does not require administrative action to be taken at a public meeting. "Administrative action" is defined as the execution of policies previously decided at an open meeting, but it does not include the deliberation of agency business. For example, a municipal governing body might decide to construct storm sewers in the municipality. The actual vote and deliberations leading up to the final decision, including the award of the construction contract, must take place at a public meeting. However, once these actions are taken, the administrative details of carrying out the project, such as meetings with the engineering firm or the scheduling of construction, do not have to occur at a meeting open to the public.

Where council had already officially acted to appoint a company as the official provider of ambulance service for the city and authorized the mayor to enter into an agreement with the company, meetings between company officials, the city solicitor, assistant city solicitor and fire chief were held to be administrative action for the purpose of negotiating the terms of the agreement.[1] The court found the meetings were held simply to execute council's authorization to engage the company for ambulance service.

In another case where city council had failed to adopt a budget by December 31, the mayor furloughed the entire police force because there was no agreement between the mayor and the police union to work without wages. All were eventually called back to work the following January 15 after enactment of the budget. The court ruled the mayor had authority to take action as the chief executive officer of the city, that he was forced to take action to lay off the police officers because he had no authority to pay wages without a budget.[2] There was no violation of the Sunshine Act. Council had discussed and defeated the proposed budget at a properly advertised public meeting. The mayor's action was administrative in nature.

When the Rules Committee of the state House of Representatives approved new expense per diems for members, the action was considered ministerial in nature.[3] The Rules Committee merely executed a resolution of the full House which was passed in an open meeting, and the action fell under the administrative exemption of the Sunshine Law.

The Sunshine Act also permits boards of auditors to conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the municipal accounts and records.[4] However, any official action taken by such boards must be taken at public meetings.

References

1. *Gowombeck v. City of Reading,* 48 D.&C.3d 324, C.P. Berks Co., 1988.
2. *Fraternal Order of Police, Flood City Lodge, No. 86 v. City of Johnstown,* 594 A.2d 838, 140 Pa.Cmwlth. 644, 1991.
3. *Common Cause/Pennsylvania v. Itkin,* 635 A.2d 1113, 161 Pa.Cmwlth. 15, 1993.
4. 65 Pa.C.S.A. § 707(c); Sunshine Act, Section 7(c).

Executive Sessions

An executive session is a meeting from which the public is excluded. That means it is a prearranged gathering attended by a quorum of members for deliberating agency business, but one from which the agency may legally exclude the public. The Act enumerates six reasons for holding executive sessions.[1] Briefly stated, they are as follows.

1. To discuss personnel matters, including hiring, promoting, disciplining, or dismissing specific public employees or officers, but not including filling vacancies in any elective office.
2. To hold information, strategy and negotiation sessions related to collective bargaining agreements or arbitration.
3. To consider the purchase or lease of real estate.
4. To consult with an attorney regarding litigation or issues where identifiable complaints are expected to be filed.
5. To discuss agency business that would lead to disclosure of information recognized as confidential or privileged under law including initiations and conduct of investigations of possible violations of the law and quasi-judicial deliberations.
6. For public colleges or universities to discuss matters of academic admission or standings.

Executive sessions may be held during the recess of a public meeting, at the conclusion of such meetings, or announced for some future time. The reason for holding an executive session must be announced at a public meeting occurring immediately prior or subsequent to the executive session. There is no time limit placed on the length of an executive session. In those cases where an executive session is not announced for a future time, agency members must be notified of the executive session 24 hours in advance. Any official action taken on the basis of discussions held in an executive session must occur at an open public meeting.[2]

A significant court decision clarified requirements of this portion of the Sunshine Act when it ruled the reason for holding an executive session must be specific. A city council had announced an executive session to discuss matters of litigation. A newspaper objected to the closed meeting because the litigation matters were not announced with specificity. The trial court ruled the council must spell out in connection with existing litigation the names of the parties, the docket number and the court in which it is filed. Regarding identifiable complaints or threatened litigation, the court ordered council to state the general nature of the complaint, but not the identity of the complainant. The position of the trial court was upheld on appeal.[3] The appellate court stated even though it is in the public interest that certain matters be discussed in private, the public has a right to know what matter is being addressed in private sessions. The reason stated by the agency must be specific, indicating a real, discrete matter that is best addressed in private.

A borough council excluded the mayor from executive sessions of council, claiming council had an absolute right to determine who could attend executive sessions. Since the mayor of a borough has a right to attend all regular and special meetings of council and may break a tie vote, a county court ruled it would be better policy to allow the mayor to attend executive sessions where no real public purpose or policy would be benefited from the exclusion.[4] However, in the rare circumstance where a lawsuit was pending between the mayor and council, the exclusion would be legitimate and reasonable.

References

1. 65 Pa.C.S.A. § 708(a); Sunshine Act, Section 8(a).
2. 65 Pa.C.S.A. § 708(c); Sunshine Act, Section 8(c); *Keenheel v. Commonwealth, Pennsylvania Securities Commission,* 579 A.2d 1358, 134 Pa.Cmwlth. 494, 1990; *Bianco v. Robinson Township,* 556 A.2d 993, 125 Pa.Cmwlth. 59, 1989; *Heidelberg Township v. Heidelberg Township Zoning Hearing Board,* 106 York 26, 1992.
3. *Reading Eagle Company v. Council of the 35 City of Reading,* 627 A.2d 305, Pa.Cmwlth. 1993.
4. *Rendina v. Psenicska and Borough of Masontown, Common Pleas,* Fayette County, G.D., July 10, 1989.

Personnel Issues

The discussion of personnel matters is a legitimate reason for holding an executive session. Personnel matters include issues involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee employed or appointed by the agency. The individual employee or appointee may request in writing that the matter be discussed at an open meeting.

The personnel exception does not apply to deliberations on filling vacancies in elective offices. The Sunshine Act was amended in 1996 to remove the personnel exception from elective office vacancies, reversing earlier court decisions upholding a school board's action in interviewing candidates and discussing their merits in executive session.[1]

But executive sessions may be used in actions involving an appointed public officer.[2] A board of school directors voted in executive session to narrow the field of candidates for the position of school superintendent from five to three. The board later met again in executive session and narrowed the field to one candidate. At a public meeting, the board voted to hire that person. Commonwealth Court determined the school board had not violated the Sunshine Act because the final vote taken in public was the one which committed the agency to a course of action. The Sunshine Act permits an agency to discuss employment matters in private executive session, but the final vote on those issues must take place in a public meeting. Commonwealth Court ruled a school board violated the Act when it failed to vote in public on providing an increase in the salary of the school superintendent.[3]

A different conclusion was reached when the issue involved independent contractors rather than public officers or employees. Commonwealth Court has ruled a wastewater treatment consultant under contract to a sewer authority was an independent contractor, not an appointed officer or employee under the terms of the Sunshine Act.[4] The personnel exception does not apply. The sewer authority violated the Sunshine Act by discussing the termination of his contract in an executive session, also by not giving the contractor an opportunity to request in writing a discussion of the issue at a public meeting.

An agency properly went into executive session to consider whether or not to enter into an agreement to accept settlement on a legal challenge to an action to terminate one of its employees.[5] However, the agency apparently failed to return to open meeting in order to vote on the agreement, thus violating the Sunshine Act. In another case, a school board negotiated an agreement with a teacher involved in disciplinary proceedings in executive session. The teacher had requested the proceedings be conducted in private. The school board then passed a motion to suspend the teacher at an open meeting. A newspaper appealed, alleging the school board had violated the Sunshine Act by executing the agreement in private without disclosing the basis for its decision at an open meeting. The court rejected the newspaper's argument by pointing out the public's right to know must be balanced under certain situations with an individual's right to seek confidentiality concerning a disciplinary matter.[6]

Where a township held a closed executive session discussing the promotion of two police officers to the rank of sergeant, it appears the decision was improperly made during the closed session because the civil service commission was notified the next day.[7] Official action to implement the personnel issues discussed in executive session must be made in an open public meeting.

During a public meeting, borough council held an executive session. Following the closed session, council recommenced the public meeting and voted to have the borough manager handle the personnel matter discussed during the executive session. In discussing the boundaries of the personnel exception for executive sessions, the court drew a distinction between the formulation of policy by an agency and the discussion of any specific employee. In this case, the personnel matter was within the exception since it related to a

particular employee's ongoing conflict with two coworkers and the employee's request for early retirement.[8] Council just heard the situation. The final outcome was a decision by the employee between options outlined in a letter from the borough manager sent subsequent to the meeting.

References

1. 65 Pa.C.S.A. § 708(a)(1); Sunshine Act, Section 8(a)(1).
2. *The Morning Call, Inc. v. Board of School Directors of Southern Lehigh School District,* 642 A.2d 619, Pa.Cmwlth., 1994.
3. *Preston v. Saucon Valley School District,* 666 A.2d 1120, Cmwlth., 1995.
4. *Easton Area Joint Sewer Authority v. The Morning Call, Inc.,* 581 A.2d 684, 135 Pa.Cmwlth. 363, 1990.
5. *Keenheel v. Commonwealth, Pennsylvania Securities Commission,* 579 A.2d 1358, 134 Pa.Cmwlth. 494, 1990.
6. *Mirror Printing Company, Inc. v. Altoona Area School District,* 609 A.2d 917, 148 Pa.Cmwlth. 168, 1992.
7. *Bianco v. Robinson Township,* 556 A.2d 993, 125 Pa.Cmwlth. 59, 1989.
8. *The Morning Call, Inc. v. Council of the Borough of East Stroudsburg,* 6 D.&C.4th 321, C.P. Monroe Co., 1989, affirmed 571 A.2d 14, 131 Pa.Cmwlth. 669.

Collective Bargaining

Executive sessions may be held for information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.[1] In an action on an unfair labor practice charge, a board of school directors first approved a tentative labor agreement in a negotiating session with the teachers union, then at a subsequent public meeting of the school board failed to ratify the agreement. The school district claimed the tentative agreement had no legal effect because it did not take place in public at a duly advertised meeting. The court ruled it was never the purpose of the Sunshine Act to compel negotiation of labor contracts in the open; executive sessions are explicitly permitted for this purpose.[2] Where a majority of the school directors first approved the agreement, then subsequently changed their vote at a public meeting, they were found to be not negotiating in good faith.

During ongoing negotiations with the nursing home staff, the county commissioners made the decision to sell or close the county home during an executive session. The commissioners issued a press release saying the home would be closed, and only afterward at the next regularly scheduled public meeting did they adopt a resolution to close it. The court found that the decision to sell or close the home was a matter subject to collective bargaining and fell within the collective bargaining exemption for executive sessions under the Sunshine Act.[3] Subsequent ratification of their action at a public meeting cured any purported infraction of the Sunshine Act due to making the decision during a closed session.

References

1. 65 Pa.C.S.A. § 708(a)(2); Sunshine Act, Section 8(a)(2).
2. *St. Clair Area School District v. St. Clair Area Education Association,* 552 A.2d 1133, 123 Pa.Cmwlth. 62, 1989, affirmed 579 A.2d 879, 525 Pa. 236, 1990.
3. *Lawrence County v. Brenner,* 582 A.2d 79, 135 Pa.Cmwlth. 619, 1990, appeal denied 593 A.2d 426, 527 Pa. 652.

Legal Matters

Agencies may hold executive sessions to consult with their attorney regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.[1] A county court upheld a private meeting between a city council and its solicitor to discuss a legal claim filed against the city arising out of the city's actions toward awarding a contract to provide ambulance service. The meeting also discussed terms and conditions of employment for city employees currently engaged in the ambulance service.[2]

While discussion on legal matters can occur in executive sessions, any official action based on those discussions must be taken at an open meeting. A township board of supervisors authorized filing an appeal of a decision by a zoning hearing board at an executive session. The township never adopted or ratified this decision at a subsequent open meeting. A county court ruled this failure by the township was a violation of the Sunshine Act.[3]

A borough took the unusual position that its action of entering into a consent decree without ratification or approval of the borough council violated the Sunshine Act. The borough was attempting to renege on a settlement agreement requiring it to complete a water diversion project. The court ruled the borough's position was clearly against the intent of the Sunshine Act and against public policy. The consent decree was the product of the borough's insurance carrier's legal representation of the borough. Since the borough's contract with the insurance carrier was entered into at a public meeting, the borough did not violate the Sunshine Act.[4] To allow the borough to use its own alleged violation of the Sunshine Act to get out of its commitments under the consent decree was against public policy.

References

1. 65 Pa.C.S.A. § 708(a)(4); Sunshine Act, Section 8(a)(4).
2. *Gowombeck v. City of Reading,* 48 D.&C.3d 324, C.P. Berks Co., 1988.
3. *Heidelberg Township v. Heidelberg Township Zoning Hearing Board,* 106 York 26, 1992.
4. *Weest v. Borough of Wind Gap,* 621 A.2d 1074, 153 Pa.Cmwlth. 330, 1993.

Conferences

Conferences are another exception to open meetings found in the Sunshine Act.[1] Conferences are defined as training programs or seminars, or any session arranged by state or federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities. Deliberation of agency business is not permitted at conferences.

A county court ruled a proposed meeting between a consultant and a school board for the purpose of reviewing a report was not a conference under the Sunshine Law. The court ordered the meeting be open to the public.[2] The meeting was scheduled by the school superintendent to allow himself and school board members to raise questions about a report on overcrowding in district schools already prepared by an outside consultant with copies distributed to the school board members. The intent of the meeting was informational; no discussions, deliberations or formal action would be taken by the board. The court ruled the proposed meeting did not meet the definition of conference in the Sunshine Act even though it found the purpose of the meeting to be truly informational.

In another case, Commonwealth Court ruled that a meeting attended by a quorum of the board of supervisors to gather information from a developer, held for the purpose of discussing a proposed change to a zoning ordinance, was really a closed meeting which violated the Sunshine Law.[3] The stated purpose of the meeting was to allow a newly appointed township supervisor to learn the background of the proposal that was to be discussed and voted on at a public meeting that evening. The court found that the actions of the attendees at the meeting clearly constituted deliberations on the proposed zoning change, since they were discussions on agency business obviously for the purpose of ultimately making a decision at some time.

While the Sunshine Law clearly requires that deliberations leading up to decisions take place at public meetings, an attempt is sometimes made to distinguish between deliberations leading to official action and discussion sessions or briefings on municipal issues or concerns. For example, a municipal manager might in private brief members of the governing body about a drainage problem in the community. Some solicitors have held that such a briefing can be considered a conference and not violate the Sunshine Act. There is little support for this position in the Act itself, since the definition of conference definitely states they are to be

training programs or seminars sponsored by state or federal agencies. Municipal officials certainly have a duty to be informed about problems in their community before they reach the point of actual official action. However, it is dangerous to try to justify briefing sessions or information gathering sessions as conferences and conduct them in closed meetings. Most of these issues will eventually resolve into official action of some sort. The concept of a meeting where members are simply informed and do not discuss issues ignores the basics of group dynamics. Members are all too likely to ask questions, pose possible responses by the municipal government and debate various courses of action. The court decisions cited above do not provide any support to the theory that so-called "informational sessions" are anywhere authorized as closed meetings by the Sunshine Law.

References

1. 65 Pa.C.S.A. § 707(b); Sunshine Act, Section 7(b).
2. *Times Leader v. Dallas School District,* 49 D.&C.3d 329, C.P. Luzerne Co., 1988.
3. *Ackerman v. Upper Mt. Bethel Township,* 567 A.2d 1116, 130 Pa.Cmwlth. 254, 1989.

Public Notice

The Sunshine Law requires notice be given of all public meetings. Notice of regularly scheduled meetings must be given once a year by advertising in a newspaper of general circulation at least three days prior to the first meeting. The notice must give the place, date and time of the first meeting and a schedule of the agency's remaining regular meetings. Notice of the meeting also must be prominently posted at the principal office of the agency or at the public building where the meeting is to be held. In the case of local governments, this usually would be the municipal building. In addition, agencies must give notice by mail to the news media or interested citizens who have supplied stamped, self-addressed envelopes for this purpose prior to the meeting. There is no provision in the law requiring a public notice to cancel meetings. However, notice is highly recommended as a courtesy to citizens who may have intended to attend the meeting.

At a minimum, the notice must include the date, time and place of the meeting. The public notice is not required to contain a statement of the purpose of the meeting or a description of the business to be conducted at the meeting.[1] For special meetings, such as public hearings on land use matters or budgets, the purpose of the meeting is often included in the notice as a benefit to the public.

For rescheduled or special meetings, notice must be published in a newspaper of general circulation at least 24 hours in advance. Posting also is required. A special meeting is one scheduled after the establishment of an agency's regular schedule of meetings. For example, municipalities frequently hold special meetings to discuss or adopt a budget.

The Sunshine Law does not require public notice of an emergency meeting. However, these meetings must be open to the public. An emergency meeting is one held to deal with an emergency involving a clear and present danger to life and property. For example, a natural disaster, such as a flood or tornado, could result in an emergency meeting. A school district's action to adopt a redistricting plan was not an emergency posing a clear and present danger to life or property. However, the court excused the district's failure to advertise the meeting on the grounds no one was harmed by the lack of compliance.[2]

The Sunshine Law does not require that executive sessions be advertised or posted at the place of the meeting. Likewise, meetings that have been recessed and later reconvened do not have to be advertised in a newspaper. However, a notice of these meetings must be posted at the principal office of the agency or at the place the public meeting is to be held.

References

1. *Devich v. Borough of Braddock,* 602 A.2d 399, 1 44 Pa.Cmwlth., 578, 1992.
2. In re Petition of the Board of Directors of the Hazleton Area School District, 527 A.2d 1091, 107 Pa.Cmwlth. 110, 1987.

Public Participation

The Sunshine Act allows agencies to adopt rules and procedures for the conduct of public meetings. These rules are established by official action of the governing body. In the case of municipalities, rules are established by ordinance, resolution or regulation. The rules and regulations must be consistent with the intent of the Sunshine Act. Rules of procedure are within the control of the majority of the municipal governing body and may be changed at any time by a majority vote.

A 1993 amendment to the Sunshine Act requires the boards or councils of political subdivisions and authorities created by political subdivisions to provide a reasonable opportunity for public comments at each advertised regular and special meeting.[1] Comments are to be limited to matters of concern, official action or deliberation which are or may be before the governing body. If there is insufficient time at a meeting for residents and taxpayers to make comments, the board or council may defer the comment period to the next regular meeting or to a special meeting prior to the next regular meeting.

A governing body may still adopt reasonable rules for the comment period. Some municipalities require persons wishing to participate to be placed on the agenda prior to the meeting. A time limit may also be placed on an individual's presentation and any resulting discussion.

The amended law contains a clause stating that as long as the political subdivision or authority complies by holding a public comment period, their action on an issue cannot be overturned solely on the basis of lack of public comment on that action. In addition, the revised law contains language granting any person the right to object at any time during a public meeting to a perceived violation of the Sunshine Act.

The Sunshine Act applies to all citizens, including nonresidents of a municipality. Meetings must be open to the general public and information made available to anyone in attendance. However, public comments may be limited to residents or taxpayers of the municipality or authority.

This new guarantee appears to apply only to the governing board or council of the political subdivision or authority. It does not explicitly apply to other bodies considered as "agencies" under the Sunshine Act, such as appointed municipal boards or commissions or committees of the governing body."

Reference

1. 65 Pa.C.S.A. § 710.1; Sunshine Act, Section 10.1.

Recording Devices

The Sunshine Act allows persons attending public meetings to record the proceedings with recording devices. This right extends to the use of videotaping equipment.[1] Public agencies are permitted to adopt reasonable rules governing the use of recording devices.

Persons who attend and verbally participate in public meetings must expect to have their statements recorded.[2] Since zoning hearing board hearings are public meetings under the terms of the Sunshine Act, any citizen has a right to tape record the session. Individuals speaking at the hearing must expect to have their statements recorded. They can have no expectation of privacy which would afford them protection under the Federal Wire Tap Act.

References

1. *Hain v. Board of School Directors of Reading School District,* 641 A.2d 661, 163 Pa.Cmwlth. 479, 1994.
2. *Harman v. Wetzel*, 766 F.Supp. 271, E.D. Pa., 1991.

Minutes

Under the Sunshine Act, the vote of each agency member must be publicly cast and all roll call votes recorded. Members of municipal governing bodies may not vote by secret ballot. Commonwealth Court ruled a school board violated the Sunshine Act when it voted to fill a vacancy on the board by secretly marking paper ballots.[1] In order for a vote to be publicly cast, a vote must be one that informs the public of an elected official's position on a particular matter of business. The school board's vote to fill a vacancy was an action requiring a public vote for purposes of the Sunshine Act. The Sunshine Act also requires written minutes be kept of all public meetings. This requirement extends to all committees of municipal governing bodies that qualify as agencies under the Act. The minutes must include the following.

1. The date, time, and place of the meeting.
2. The names of members present.
3. The substance of all official actions and a record of roll call votes.
4. The names of all citizens who appeared officially at the meeting and the subject of their testimony.

In a court case involving alleged sex discrimination by a fire company, Commonwealth Court ruled the Pennsylvania Human Relations Commission was not required to provide proof that each commissioner reviewed the entire report or that a majority of commissioners voted in favor of the decision.[2] The Commission's order was signed by the chair and attested by the secretary, showed no dissent and indicated the Commission unanimously supported the decision. The Sunshine Act requires the Commission to keep a record of its official actions, but the objecting party bears the burden to prove lack of compliance.

References

1. *Public Opinion v. Chambersburg Area School District,* 654 A.2d 284, Pa.Cmwlth., 1995.
2. *George Clay Steam Fire Engine and Hose Co. v. Pennsylvania Human Relations Commission,* 639 A.2d 893, Pa.Cmwlth., 1994.

Confidentiality

The Sunshine Act contains a provision which excludes from the scope of the statute certain confidential or privileged deliberations or actions, including investigations of possible violations of the law.[1] A district attorney's office was investigating a borough police chief for failure to issue citations for driving under the influence. A court ruled the borough was not required under the Sunshine Act to vote and adopt charges against the chief at an open meeting because the matter was then under investigation by the district attorney. The charges were ruled outside the scope of the Sunshine Act.[2]

The Public School Code authorizes professional employees subject to disciplinary proceedings to request a closed hearing.[3] Such a request by a teacher protected the facts forming the basis for suspension from disclosure under the Sunshine Act.[4]

References

1. 65 Pa.C.S.A. § 716; Sunshine Act, Section 16.
2. In re Blystone, 600 A.2d 672, 144 Pa.Cmwlth. 27, 1991, appeal denied 626 A.2d 1159.
3. 24 P.S. 11-1126; Public School Code, Section 1126.
4. *Mirror Printing Company, Inc. v. Altoona Area School District,* 609 A.2d 917, 148 Pa.Cmwlth. 168, 1992.

Violations

No state administrative agency has been given jurisdiction in legal challenges under the Sunshine Act. Rather, the Sunshine Act gives county courts of common pleas original jurisdiction in legal challenges involving local governments. Commonwealth Court has jurisdiction in cases involving state agencies. Courts have the discretion to invalidate official actions taken at meetings violating the Sunshine Act. Courts may enforce the law through injunctions or other appropriate remedies. This means that any citizen aggrieved by an alleged violation of the Sunshine Act does not have administrative recourse, as is the case under the State Ethics Act. Challenges to the actions of agencies under the Sunshine Act can only be brought in the courts.

The Sunshine Act grants standing to sue to any person and places venue either where the agency is located or where the act occurred. Under Pennsylvania law, corporations are included within the meaning of persons. A corporate newspaper was found to have standing to bring an action against a school district for alleged violations of the Sunshine Act. The school district had declined to divulge how the school directors had voted in secret ballot to fill a vacancy on the school board. The court ruled the newspaper had standing to sue based on the plain language in the Sunshine Act allowing any person to bring action. Moreover, the court held the newspaper had standing based on the role of the press in our society. The press's interest is different from that of the average citizen because the news media has the responsibility for informing the public.[1]

Even though a violation of the Sunshine Law occurs, it remains at the discretion of a court whether or not to invalidate official actions or deliberations taken at the meeting; there is no automatic invalidation. In each case, the courts have looked at the effect of the violation on the entire decision-making process.

In one case, a court found a violation of the Sunshine Act took place when two township supervisors discussed a proposed zoning ordinance at a closed meeting. However, the closed meeting produced no votes or decisions. Later that same evening, the supervisors held a public meeting on the same issue. The board took official action approving the zoning amendment at the open meeting after extensive public discussion of the issues by citizens, the supervisors and the developer. The court found no evidence the official action at this public meeting was a mere rubber stamp approval. An appellate court ruled the trial court had not abused its discretion in refusing to set aside the zoning amendment.[2] The court also found that where no action was taken at the closed meeting and the only official action was taken at a succeeding public meeting, there is no legislative authority for the courts to invalidate the action taken at the public meeting.[3]

In other instances, the entire decision-making process has been examined to determine the damage caused by the action taken at a closed meeting. Where the action taken at a closed meeting followed extensive public meetings and a widespread discussion of the issues, and where setting aside the decision would cause significant delays in instituting a reorganization plan, generate uncertainty among students and faculty and add costs for the taxpayers, the court upheld the action of the trial court in exercising its discretion not to invalidate the reorganization plan.[4]

Sunshine Act violations can be cured by subsequent ratification at public meetings, otherwise governmental action in a particular area would be gridlocked. In one case, a decision to close the county home taken at a closed meeting was subsequently ratified by a resolution adopted by the board of county commissioners at the next regularly scheduled public meeting.[5] In a similar case, a planning commission was found to violate the Sunshine Act by holding a closed meeting to consider a recommendation on amending the township junkyard ordinance.[6] However, the situation was cured when the planning commission held a subsequent open meeting where citizens were allowed to voice their opinions on the recommendation.

Where a school board conducted an illegal written ballot to fill a vacancy on the board, a second publicly-cast vote was found to cure the action.[7] In another case where a decision was made at a closed meeting and the agency failed to return to open meeting to vote on accepting a legal settlement, the court exercised its discretion not to invalidate the action on the grounds that the affected party did not claim injury because of the

violation. Justice would not be served by setting aside the settlement on this basis.[8] A township board of supervisors decided in an executive session to appeal a decision by the township zoning hearing board. The township failed to adopt or ratify this action at a subsequent public meeting. A county court ruled this failure constituted a violation of the Sunshine Act and invalidated the township's decision to file an appeal.[9] Where a school board agreed in an executive session to increase the superintendent's salary, it failed to vote on it in a public meeting, the action was set aside by the court.[10]

Legal challenges under the Sunshine Act must be filed within 30 days from the date of an open meeting. If the meeting was not open, the challenge must occur within 30 days from the discovery of the meeting. No legal challenge may commence more than one year from the date of the meeting in question. The 30-day rule for filing legal challenges has been upheld in court rulings.[11] Courts may impose attorney fees for legal challenges initiated in bad faith.

The Sunshine Act does not specify the nature of a legal challenge occurring under the statute. The Commonwealth Court has ruled the manner in which the challenge is commenced, whether by complaint, writ, agreement, or other means, is of no particular significance. A writ of summons was found to be a valid challenge under the Sunshine Act.[12]

Violation of the Sunshine Act is deemed a summary offense. Public officials found guilty of violating the law may be sentenced to a fine of up to $100 plus costs of prosecution. Summary offense proceedings may be heard before a district justice.[13] A county court ruled that the jurisdiction of courts of common pleas in cases involving local agency violations of the Sunshine Act is not exclusive. Rather, it is concurrent with the jurisdiction of district justices to hear summary offenses.[14]

References

1. *Press Enterprise v. Benton Area School District,* 604 A.2d 1221, Pa.Cmwlth., 1992.
2. *Ackerman v. Upper Mt. Bethel Township,* 567 A.2d 1116, 130 Pa.Cmwlth. 254, 1989.
3. Ackerman, supra; *Devich v. Borough of Braddock,* Allegheny County Court of Common Pleas, No. 90-01251, Civil Division, 1990; *Frazer Concerned Citizens v. Frazer Township,* 140 P.L.J. 342, 1992.
4. *Bradford Area Education Association v. Bradford Area School District,* 572 A.2d 1314, 132 Pa.Cmwlth. 385, 1990.
5. *Lawrence County v. Brenner,* 582 A.2d 79, 135 Pa.Cmwlth. 619, 1990, appeal denied 593 A.2d 426, 527 Pa. 652.
6. *Moore v. Township of Raccoon,* 625 A.2d 737, 155 Pa.Cmwlth. 529, 1993.
7. *Public Opinion v. Chambersburg Area School District,* 654 A.2d 284, Pa.Cmwlth., 1995.
8. *Keenheel v. Commonwealth, Pennsylvania Securities Commission,* 579 A.2d 1358, 134 Pa.Cmwlth. 494, 1990.
9. *Heidelberg Township v. Heidelberg Township Zoning Hearing Board,* 106 York 26, 1992.
10. *Preston v. Saucon Valley School District,* 666 A.2d 1120, Pa.Cmwlth., 1995.
11. *Tom Mistick and Sons, Inc., v. City of Pittsburgh,* 567 A.2d 1107, 130 Pa.Cmwlth. 234, 1989; Bradford, supra; *Hain v. Board of School Directors of Reading School District,* 641 A.2d 661, 163 Pa.Cmwlth. 479, 1994.
12. Tom Mistick, supra.
13. 42 Pa.C.S. 1515(a)(1).
14. In re: Private Criminal Complaint of Ivan Nusic, Northampton County Court of Common Pleas, No. 313-1990.

Sunshine Act

Act of October 15,1998, P.L. 729, No. 93 as amended by Act of July 15, 2004, P.L. 743, No. 88
65 Pa.C.S.A. § 701 et seq.

An Act

Requiring public agencies to hold certain meetings and hearings open to the public; and providing penalties.

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The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

This act shall be known and may be cited as the Sunshine Act.

Section 2. Legislative findings and declaration.

(a) Findings. The General Assembly finds that the right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation and decision making of agencies is vital to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society.

Declarations.—The General Assembly hereby declares it to be the public policy of this Commonwealth to insure the right of its citizens to have notice of and the right to attend all meetings of agencies at which any agency business is discussed or acted upon as provided in this act.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Administrative action." The execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the agency. The term does not, however, include the deliberation of agency business.

"Agency." The body, and all committees thereof authorized by the body to take official action or render advice on matters of agency business, of all the following: the General Assembly, the executive branch of the government of this Commonwealth, including the Governor's Cabinet when meeting on official policymaking business, any board, council, authority or commission of the Commonwealth or of any political subdivision of the Commonwealth or any State, municipal, township or school authority, school board, school governing body, commission, the boards of trustees of all State-aided colleges and universities, the councils of trustees of all State-owned colleges and universities, the boards of trustees of all State- related universities and all community colleges or similar organizations created by or pursuant to a statute which declares in substance that the organization performs or has for its purpose the performance of an essential governmental function and through the joint action of its members exercises governmental authority and takes official action. The term shall include the governing board of any nonprofit corporation which by a mutually binding legal written agreement with a community college or State-aided, State-owned or State-related institution of higher education is granted legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education. The term does not include a caucus or a meeting of an ethics committee created under rules of the Senate or House of Representatives.

"Agency business." The framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action.

"Caucus." A gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action in the General Assembly.

"Conference." Any training program or seminar, or any session arranged by State or Federal agencies for local agencies, organized and conducted for the sole purpose of providing information to agency members on matters directly related to their official responsibilities.

"Deliberation." The discussion of agency business held for the purpose of making a decision.

"Emergency meeting." A meeting called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

"Executive session." A meeting from which the public is excluded, although the agency may admit those persons necessary to carry out the purpose of the meeting.

"Litigation." Any pending, proposed or current action or matter subject to appeal before a court of law or administrative adjudicative body, the decision of which may be appealed to a court of law.

"Meeting." Any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.

"Official action."

(1) Recommendations made by an agency pursuant to statute, ordinance or executive order.

(2) The establishment of policy by an agency.

(3) The decisions on agency business made by an agency.

(4) The vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

"Political Subdivision." Any county, city, borough, incorporated town, township, school district, intermediate unit, vocational school district or county institution district.

"Public notice."

(1) For a meeting:

(i) Publication of notice of the place, date and time of a meeting in a newspaper of general circulation, as defined by 45 Pa.C.S. § 101 (relating to definitions), which is published and circulated in the political subdivision where the meeting will be held, or in a newspaper of general circulation which has a bona fide paid circulation in the political subdivision equal to or greater than any newspaper published in the political subdivision.

(ii) Posting a notice of the place, date and time of a meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(iii) Giving notice to parties under section 9(c).

(2) For a recessed or reconvened meeting:

(i) Posting a notice of the place, date and time of the meeting prominently at the principal office of the agency holding the meeting or at the public building in which the meeting is to be held.

(ii) Giving notice to parties under section 9(c).

"Special meeting." A meeting scheduled by an agency after the agency's regular schedule of meetings has been established.

Section 4. Open Meetings.

Official action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public unless closed under section 7 (relating to exceptions to open meetings), 8 (relating to executive sessions) or 12 (relating to General Assembly meetings covered).

Section 5. Recording of Votes.

In all meetings of agencies, the vote of each member who actually votes on any resolution, rule, order, regulation, ordinance or the setting of official policy must be publicly cast and, in the case of roll call votes, recorded.

Section 6. Minutes of meetings, public records and recording of minutes.

Written minutes shall be kept of all open meetings of agencies. The minutes shall include:

(1) The date, time and place of the meeting.

(2) The names of members present.

(3) The substance of all official actions and a record by individual member of the roll call votes taken.

(4) The names of all citizens who appeared officially and the subject of their testimony.

Section 7. Exceptions to open meetings.

(a) Executive session.—An agency may hold an executive session under section 8 (relating to executive sessions).

(b) Conference.—An agency is authorized to participate in a conference which need not be open to the public. Deliberation of agency business may not occur at a conference.

(c) Certain working sessions.—Boards of auditors may conduct working sessions not open to the public for the purpose of examining, analyzing, discussing and deliberating the various accounts and records with respect to which such boards are responsible, so long as official action of a board with respect to such records and accounts is taken at a meeting open to the public and subject to the provisions of this act.

Section 8. Executive sessions.

(a) Purpose.—An agency may hold an executive session for one or more of the following reasons:

(1) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in executive session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The provisions of this subsection shall not apply to any meeting involving the appointment or selection of any person to fill a vacancy in any elected office.

(2) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement, or in the absence of a collective bargaining unit, related to labor relations and arbitration.

(3) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.

(4) To consult with its attorney or other professional advisor regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.

(5) To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.

(6) For duly constituted committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

(b) Procedure.—The executive session may be held during an open meeting at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session. If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

(c) Limitation.—Official action on discussions held pursuant to subsection (a) shall be taken at an open meeting. Nothing in this section or section 7 shall be construed to require that any meeting be closed to the public, nor shall any executive session be used as a subterfuge to defeat the purposes of section 4.

Section 9. Public notice.

(a) Meetings.—An agency shall give public notice of its first regular meeting of each calendar or fiscal year not less than three days in advance of the meeting and shall give public notice of the schedule of its remaining regular meetings. An agency shall give public notice of each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the time of the convening of the meeting specified in the notice. Public notice is not required in the case of an emergency meeting or a conference. Professional licensing boards within the Bureau of Professional and Occupational Affairs of the Department of State of the Commonwealth shall include in the public notice each matter involving a proposal to revoke, suspend or restrict a license.

(b) Notice.—With respect to any provision of this act that requires public notice to be given by a certain date, the agency, to satisfy its legal obligation, must give the notice in time to allow it to be published or circulated within the political subdivision where the principal office of the agency is located or the meeting will occur before the date of the specified meeting.

(c) Copies.—In addition to the public notice required by this section, the agency holding a meeting shall supply, upon request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held, to any radio or television station which regularly broadcasts into the political subdivision and to any interested parties if the newspaper, station or party provides the agency with a stamped, self-addressed envelope prior to the meeting.

(d) Meetings of the General Assembly in Capitol Complex.—Notwithstanding any provision of this section to the contrary, in case of session of the General Assembly, all meetings of legislative committees held within the Capitol Complex where bills are considered, including conference committees, all legislative hearings held within the Capitol Complex where testimony is taken and all meetings of legislative commissions held within the Capitol Complex, the requirement for public notice thereof shall be complied with if, not later than the preceding day:

  (1) The supervisor of the newsroom of the State Capitol Building in Harrisburg is supplied for distribution to the members of the Pennsylvania Legislative Correspondents Association with a minimum of 30 copies of the notice of the date, time and place of each session, meeting or hearing.

  (2) There is posting of the copy of the notice at public places within the Main Capitol Building designated by the Secretary of the Senate and the Chief Clerk of the House of Representatives.

(e) Announcement. Notwithstanding any provision of this act to the contrary, committees may be called into session in accordance with the provisions of the Rules of the Senate or the House of Representatives and an announcement by the presiding officer of the Senate or the House of Representatives. The announcement shall be made in open session of the Senate or the House of Representatives.

Section 10. Rules and regulations for conduct of meetings.

Nothing in this act shall prohibit the agency from adopting, by official action, the rules and regulations necessary for the conduct of its meetings and the maintenance of order. The rules and regulations shall not be made to violate the intent of this act.

Section 10.1 Public participation.

(a) General rule.—Except as provided in subsection (d), the board or council of a political subdivision or of an authority created by a political subdivision shall provide a reasonable opportunity at each advertised regular meeting and advertised special meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment on matters of concern, official action or deliberation which are or may be before the board or council prior to taking official action. The board or council has the option to accept all public comment at the beginning of the meeting. If the board or council determines that there is not sufficient time at a meeting for residents of the political subdivision or of the authority created by a political subdivision or for taxpayers of the political subdivision or of the authority created by a political subdivision or for both to comment, the board or council may defer the comment period to the next regular meeting or to a special meeting occurring in advance of the next regular meeting.

(b) Limitation on judicial relief.—If a board or council of a political subdivision, or an authority created by a political subdivision, has complied with the provisions of subsection (a), the judicial relief under section 13 shall not be available on a specific action solely on the basis of lack of comment on that action.

(c) Objection.—Any person has the right to raise an objection at any time to a perceived violation of this act at any meeting of a board or council of a political subdivision or an authority created by a political subdivision.

(d) Exception.—The board or council of a political subdivision or of an authority created by a political subdivision which had, before January 1, 1993, established a practice or policy of holding special meetings, solely for the purpose of public comment, in advance of advertised regular meetings, shall be exempt from the provisions of subsection (a).

Section 11. Use of equipment during meetings.

(a) Recording devices.—Except as provided in subsection (b), a person attending a meeting of an agency shall have the right to use recording devices to record all the proceedings. Nothing in this section shall prohibit the agency from adopting and enforcing reasonable rules for their use under Section 10.

(b) Rules of the Senate and House of Representatives.—The Senate and House of Representatives may adopt rules governing the recording or broadcast of their sessions and meetings and hearings of committees.

Section 12. General Assembly meetings covered.

Notwithstanding any other provision, for the purpose of this act, meetings of the General Assembly which are covered are as follows: All meetings of committees where bills are considered, all hearings where testimony is taken and all sessions of the Senate and House of Representatives. Not included in the intent of this act are caucuses or meetings of any ethics committee created pursuant to the Rules of the Senate or the House of Representatives.

Section 13. Business transacted at unauthorized meeting void.

A legal challenge under this act shall be filed within 30 days from the date of a meeting which is open, or within 30 days from the discovery of any action that occurred at a meeting which was not open at which the act was violated, provided that, in the case of a meeting which was not open, no legal challenge may be commenced more than one year from the date of said meeting. The court may enjoin any challenged action

until a judicial determination of the legality of the meeting at which the action was adopted is reached. Should the court determine that the meeting did not meet the requirements of this act, it may in its discretion find that any or all official action taken at the meeting shall be invalid. Should the court determine that the meeting met the requirements of this act, all official action taken at the meeting shall be fully effective. The court may impose attorney fees for legal challenges commenced in bad faith.

Section 14. Penalty.

Any member of an agency who participates in a meeting with the intent and purpose by that member of violating this act commits a summary offense and shall, upon conviction, be sentenced to pay a fine not exceeding $100 plus costs of prosecution.

Section 14.1 Attorney Fees.

If the court determines that an agency willfully or with wanton disregard violated a provision of this chapter, in whole or in part, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs. If the court finds that the legal challenge was of a frivolous nature or was brought with no substantial justification, the court shall award the prevailing party reasonable attorney fees and costs of litigation or an appropriate portion of the fees and costs.

Section 15. Jurisdiction and venue of judicial proceedings.

The Commonwealth Court shall have original jurisdiction of actions involving State agencies and the courts of common pleas shall have original jurisdiction of actions involving other agencies to render declaratory judgments or to enforce this act, by injunction or other remedy deemed appropriate by the court. The action may be brought by any person where the agency whose act is complained of is located or where the act complained of occurred.

Section 16. Confidentiality.

All acts and parts of acts are repealed insofar as they are inconsistent herewith, excepting those statutes which specifically provide for the confidentiality of information. Those deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matter related to the investigation of possible or certain violations of the law and quasi-judicial deliberations, shall not fall within the scope of this act.

Section 17. Repeals.

The following acts and parts of acts are repealed:

Act of June 21, 1957 (P.L. 392, No. 213), entitled, as amended, “An act requiring that the meetings of the governing bodies of political subdivisions and of certain authorities and other agencies performing essential governmental functions shall be open to the public; requiring public notice of such meetings; and prescribing penalties.”

Act of July 19, 1974 (P.L. 486, No. 175), entitled, “An act requiring public agencies to hold certain meetings and hearings open to the public and providing penalties.”

Section 18. Effective date.

This act shall take effect in six months.

APPROVED- The 3rd day of July, A.D. 1986.
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