



**A Citizen's Guide To  
The Pennsylvania Sunshine Act**

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## INTRODUCTION

The operation of local and Commonwealth government in Pennsylvania is subject to Pennsylvania's Sunshine Act. The Act was originally adopted so that all of the Commonwealth's citizens could have a legislative right to be present at most any meeting held by nearly any government body operating within Pennsylvania. 65 PA. CONS. STAT. § 702 (1998). This Citizen's Guide provides a summary overview of what the Act requires.

### **Pennsylvania's Sunshine Act: The Basics**

The basic requirement of the Act is simple: Any time a government body (referred to within in the act as an "agency") holds a meeting in which "deliberation" or "official action" by a quorum of its members takes place, the meeting must be open to the public after public notice of the meeting. Each of these provisions can be described in more detail.

#### ***What is "Deliberation" Under the Act?***

The Act defines "deliberation" as "the discussion of agency business held for the purpose of making a decision." 65 PA. CONS. STAT. § 703. The definition is a simple one and has been construed as such by courts of the Commonwealth.

In *Ackerman v. Upper Mt. Bethel Twp.*, 567 A.2d 1116 (Pa. Commw. 1989), two of three members of the township's board of supervisors met privately with a representative of Bethel Heights Associates to discuss an amendment of a zoning ordinance in anticipation of a public meeting to vote on the amendment. The amendment passed after lengthy public debate on the matter. The Commonwealth Court held that the activities of the first closed meeting constituted a "deliberation" under the Act, as it was held solely to discuss the business of that agency and that such a meeting fits exactly with the Act's definition of the term. *Id.* at 1119. It was of no consequence to the court that the meeting was requested by a newly-appointed supervisor to better acquaint him with the issue at hand.

A similar result occurred in *Moore v. Twp. of Racoon*, 625 A.2d 737 (Pa. Commw. 1993). The township's planning commission supervisor asked for the members of the commission to meet at her residence to review recommended changes to the township's junkyard ordinance. The commission subsequently recommended an amended junkyard ordinance at the next public meeting. The Commonwealth Court held that merely discussing the possible changes to the ordinance at closed meeting with a majority of the commission's members present constituted "deliberation" under the Act. *Id.* at 740.

However, not all meetings qualify as deliberations under the Act. In *Commonwealth v. Steward*, 357 A.2d 255 (Pa. Commw. 1976), the Department of Environmental Protection's Solid Waste Management Division consulted in a closed meeting with its own staff members on whether to issue a permit to construct a solid waste landfill in Lycoming County. Because the Commonwealth Court held that the decision whether or not to issue such a permit was not the "official action" contemplated by the Act, mere consultation with one's subordinates was not deliberation. *Id.* at 257.

In short, deliberation occurs whenever a majority of an agency's members meet to discuss an issue and those discussions go towards making a decision on the matter. Simply discussing an issue to familiarize oneself with it can qualify as a deliberation, so long as a majority of the agency's members are present.

### ***What is "Official Action" Under the Act?***

The Sunshine Act defines "official action" as 1) agency recommendations made pursuant to statute, ordinance or executive order, 2) agency establishment of policy, 3) decisions made by an agency that concern agency business and 4) a vote taken by an agency on motions, proposals, resolutions, rules, regulations, ordinances, reports or orders. 65 PA. CONS. STAT. § 703. This definition has been elaborated, interpreted and understood by Pennsylvania courts as covering a range of different activities that are undertaken by many different government bodies throughout the Commonwealth.

In *Patriot-News Co. v. Empowerment Team*, 763 A.2d 539 (Pa. Commw. 2000), a Harrisburg publication demanded that the empowerment teams of two local school districts hold their meetings open to the public, as they had the power to supersede previous decisions made by their respective directors and administrators. In that instance, the Commonwealth Court held these empowerment teams were, in fact, agencies for the purposes of the Sunshine Act because they were empowered to create an improvement plan, comprised of recommendations and policy establishment under their activating statute. Thus, actions of the empowerment teams constituted "official action" under the Act. *Id.* at 544-45. As such, any meeting that these teams held in which similar courses of conduct were to be discussed or taken must be open to the public.

Similarly, in *Preston v. Saucon Valley School Dist.*, 666 A.2d 1120 (Pa. Commw. 1995), a superintendent sued his former employers after having an increase in his salary rescinded by a newly elected school board. The Commonwealth Court upheld the rescission, as the original school board did not open the meeting at which this salary increase was approved to the public. The court rationalized that, because the decisions of a school board that "commit [it] to a particular course of conduct" was specifically included within the Act's definition of "official action," the meeting at which this decision took place was required to be open to public participation. *Id.* Because the meeting approving the raise was not open, the board's action was void.

In contrast, when an agency sets up a meeting to discuss business not within in its purview, there does not need to be an open meeting. In *Belitskus v. Hamlin Twp*, 764 A.2d 669 (Pa. Commw. 2000), a citizen sued Hamlin Township because of various actions undertaken by the township supervisors, including setting up a closed meeting with McKean County Redevelopment Authority and the Hazel Hurst Water Association. The Commonwealth Court held that this particular action did not constitute "official action," as the meeting concerned the agency business of the Water Association, not the Supervisors, and the meeting was to allow the Association and the Supervisors to better understand the Association's financial options and obligations concerning a recent project. *Id.* at 671-72. The Court therefore concluded that the

meeting did not need to be open because it dealt with the business of the Association and not the Supervisors. *Id.* at 672.

The Commonwealth Court took a similar approach in *Morning Call Inc. v. Board of School Directors of Lehigh School Dist.*, 642 A.2d 619 (Pa. Commw. 1994). In that case, a local publication alleged that the school board violated the Act in narrowing its list of possible superintendent candidates from five people to three in a closed meeting where votes were taken. The court upheld this action of the district, rationalizing that just because a vote is taken does not mean it constitutes official action under the Act because a “straw vote” to further vet some candidates for a position and to remove others from consideration, being secondary to the ultimate matter, is exactly the kind of activity allowed to take place in closed executive sessions under the Act. *Id.* at 623. The vote that will actually constitute official action is the vote that will commit an agency to a certain conduct, thus requiring an open meeting. *Id.*

### ***What are the Public Notice Requirements Under the Act?***

When the Act requires a meeting be open to the public, the agency must publish notice of the date, time and place of the meeting in a newspaper of general circulation. 65 PA. CONS. STAT. § 703. This newspaper must be published and circulated in the political subdivision wherever the meeting is to be held, but can be a newspaper of general circulation, so long as it has a bona fide paid circulation within this political subdivision equal to or greater than any other newspaper published within the political subdivision. A notice of the date, time and place of the meeting must also be “prominently” displayed at the primary office of the agency holding the meeting or at the location of the public building in which the meeting will be held. In addition, as allowed by section 709(c) governing public notice to interested parties, the agency will make interested parties directly aware of the meeting with a copy of their public notice should the parties provide a self-addressed envelope to the agency.

All of these requirements are subject to time restrictions. Public notice must be given three days in advance of first regular meeting of the fiscal or calendar year and of its subsequent schedule of remaining regular meetings. However, should the meeting be recessed or reconvened, as opposed to a regular meeting, the requirements change slightly. In such an instance, the agency must still post a notice of the date, time and place of the meeting at their principal office or the public building at which the meeting will take place and give notice to interested parties, as per the requirements of section 709(c), but need not put such notice in a newspaper of general circulation. These requirements are also subject to a time limitation; public notice of such meetings, in addition to special meetings outside of a regular schedule, must be made at least twenty-four hours in advance. *See* 65 PA. CONS. STAT. § 703.

### ***Can I Record a Public Meeting?***

Yes. Section 711 of the Act provides that “a person attending a meeting of an agency shall have the right to use recording devices to record all of the proceedings.” However, the agency does have the right to adopt and enforce reasonable rules for the use of such recording devices.

## **ARE THERE EXCEPTIONS TO THE OPEN MEETING REQUIREMENT UNDER THE ACT?**

Yes. While meetings held by agencies must generally be open to the public, there are several exceptions explicitly mentioned within the Act. These exceptions come in the form of three categories: executive sessions, conferences and certain working sessions.

### *Executive Sessions*

The first category of exceptions to the Act's open meeting requirement is referred to as "executive sessions." Such sessions are simply defined as meetings from which the public is excluded. 65 PA. CONS. STAT. § 703.

There are several purposes outlined in the Act that would justify an executive session which is closed to the public. These purposes are: 1) to discuss matters of employment (such as prospective employment, appointment, terms and conditions of employment, promotions, and discipline of public officers and employees); 2) to hold strategy, information or negotiation sessions relating to collective bargaining agreements or labor relations and arbitrations; 3) considering the purchase or lease of real property; 4) consultations with an attorney in connection with potential or current litigation; 5) to discuss or review agency business would could potentially violate a lawful privilege or information and confidentiality recognized by the law; and 6) committees of trustees of State-owned, State-aided and State-related colleges and universities or the Board of Governors of the State System of Higher Education to discuss academic standing or admissions issues. *See id* at § 708(a)(1)-(6).

Despite the fact that such executive sessions can be held without public participation and attendance, the public nonetheless has a right to know what the topic of discussion will generally be at such a session. *See id.* at § 708(b); *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305, 307 (Pa. Comm. 1993) (stating that executive sessions under Sunshine Act can only be held when reasons are given in order for the public "to determine from the reason given whether they are being properly excluded from the session."). The topic of an executive session must be announced at whatever open meeting occurs just prior or immediately after the executive session. In addition, executive sessions can be held during an open meeting, at the conclusion of an open meeting or may be announced as to be held at a future date. *Id.* at § 708(b).

No official action can occur during an executive session and any discussion that should take place therein cannot lead to such action outside of an open meeting – an executive session cannot be used as a method to defeat the "open meeting" requirement of the Act. *Id.* at § 708(c).

### *Conferences*

Conferences, like executive sessions, can be exempt from the Act's "open meeting" requirement. Conferences are defined as "[a]ny 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.” 65 PA. CONS. STAT. § 703.

Section 707 of the Act explicitly allows agencies to hold such conferences free from public participation. However, they cannot be used for the deliberation of any agency business. *Id.* at § 707(b). Public notice is not required to hold a conference. *Id.* at § 709(a).

There is evidence from a single Court of Common Pleas decision, *Times Leader v. Dallas School District*, 49 Pa. D. & C.3d 329 (Pa. Com. Pl. 1988), that meetings closed to the public held for informational purposes may not be conferences and thus must be opened to public participation. In that instance, a “conference” was called by the superintendent of the school in order to discuss a report which made recommendations to alleviate student overcrowding. It appears that, because the study was approved at a public meeting and is to be paid for with public funds, public notice and participation was required. *Id.* at 330.

### ***Working Sessions***

Certain working sessions are the last exemption to the Act’s open meeting requirement. This is the narrowest of the exemptions. It allows boards of auditors to examine, analyze, discuss and deliberate accounts and records over which they are responsible. 65 PA. CONS. STAT. § 703. However, the Act demands that no official action be taken as a result of such working sessions outside of an open meeting.

### **WHAT ARE THE PENALTIES FOR NONCOMPLIANCE WITH THE ACT?**

The Act sets penalties and punishments for an agency which violates its open meeting requirement. Should a meeting take place which violates the requirements of the Act, it is within the discretion of a judge to invalidate any or all official action that occurred therein. *Id.* at § 713. Further, any member of an agency who participated in a meeting with the intent of violating the Act commits a summary offense, punishable by a fine of no more than 100 dollars, in addition to the costs of prosecution. *Id.* at § 714. Finally, should a court determine that an agency “willfully or with wanton disregard” violated the Act, the Court must award at least a portion of prevailing party’s attorney fees and the costs of litigation. *Id.* at § 714.1.