

The Pennsylvania Sunshine Act¹

The right of the public to be present at all meetings of certain defined public bodies (i.e., “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.”²

In addition to guaranteeing this right, the Sunshine Act also requires the advertising and public notice of agency meetings and provides for reasonable public comment during board, council, or authority meetings. It also provides for limited exceptions and establishes penalties for violations of the act.

In most cases³, any agency that is holding a public meeting must post the meeting agenda to their publicly accessible website, if one is available, at least 24 hours before the scheduled meeting, and at the location of the meeting and the principal office of the agency that is holding the meeting. This posted agenda must inform the public of any scheduled deliberation or public action that will occur at the meeting. The agency is required to make and distribute copies of the agenda to all that are present at the public meeting.⁴ The agency is prohibited from taking any official action on any item that was not listed on the agenda, with the following exceptions:⁵

- (1) Actions related to a real or potential emergency, regardless of public notice for the meeting;
- (2) Actions arising within 24 hours of the scheduled meeting, so long as the matter is *de minimis* in nature and does not require any funds; or
- (3) Actions for future research regarding matters brought to the agency by a resident or taxpayer during the meeting.

Additions to the agenda may occur at the meeting, provided they are publicly announced and subsequently approved by a majority vote of the body. Official action may then be taken on the additional items. All such changes must be posted to the agency’s publicly accessible website and at the agency’s principal office within one business day. Minutes must reflect any changes made to the agenda.⁶

¹ 65 Pa.C.S. § 701 *et seq.*

² *Id.* at § 702.

³ *See* 65 Pa.C.S. §§ 709 (c.1) (2), and 712.1 (e) for exceptions.

⁴ *Id.* at § 709 (c) (1).

⁵ *Id.* at §§ 712.1 (b), (c), (d).

⁶ *Id.* at § 712.1 (e) (1).

“Agencies” Subject to the Act

“The body, and all committees thereof⁷ 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 does not include a caucus or a meeting of an ethics committee created under rules of the Senate or House of Representatives.”⁸ Senate and House of Representative caucuses and meetings of ethics committees are not subject to the Sunshine Act.⁹

The Sunshine Act does not prohibit the nonpublic gathering of less than a quorum of the agency body, e.g., two members of a five-member board of supervisors. It also does not apply to meetings where only “administrative action” is taken by the body. “Administrative action” is defined as “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.”¹⁰ The Pennsylvania Supreme Court held that closed-door fact-finding meetings conducted by a quorum of the governing body did not violate the Sunshine Act because the gatherings were held for informational purposes only and did not involve deliberations.¹¹ The court noted that “merely learning about the salient issues so as to reach an informed resolution at some later time does not in itself constitute deliberation.”¹² The law also provides that during meetings, all votes of agency members must be made in public.

⁷ For an interesting discussion on committees of agencies, see *Lee Publications, Inc., et al., v. The Dickinson School of Law of The Pennsylvania State University Assn., et al.*, 848 A.2d 178 (Pa. Cmwlth. 2004).

⁸ 65 Pa.C.S. § 703.

⁹ *Id.* at § 712.

¹⁰ *Id.* at § 703.

¹¹ *Smith v. Twp. of Richmond*, 82 A.3d 407 (Pa. 2013).

¹² *Id.* at 416.

Exceptions in the Act

Executive Sessions. Defined as a meeting from which the public is excluded, executive sessions may occur for only one of the six purposes:¹³

- (1) To discuss matters involving employment or performance of officers or employees of the agency, provided that any affected individual is given the opportunity to request, in writing, that the meeting be held in public;
- (2) To hold meetings involving collective bargaining, labor relations and arbitration;
- (3) To consider the purchase or lease of real property;
- (4) To meet with an attorney or other professional advisor regarding litigation or issues where an identifiable complaint is expected to be filed;
- (5) To discuss agency business which, if discussed in public, would lead to the disclosure of information protected by law, including ongoing investigations; or
- (6) To hold discussions of academic admissions or standing by the governing bodies of State-owned, State-aided, or State-related colleges or universities.

Executive sessions may be held during an open meeting or at the conclusion of an open meeting or announced for a future time. Prior to convening an executive session, the agency must announce with proper specificity the purpose of the executive session. If the session is not for a future time, the members of the agency must be notified of the session 24 hours in advance.

Conferences. A quorum of an agency may attend conferences or other informative gatherings without requiring that the event be open to the public. Deliberation concerning agency business, however, is prohibited.

Working Sessions. Although most agency bodies may no longer hold “work sessions” to avoid the act’s requirements, boards of auditors may do so for the purpose of discussing and deliberating accounts and records, provided any official action is then taken at a subsequent public meeting.

Other Confidential Communications. The act exempts from its scope the “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....”¹⁴

¹³ See 65 Pa.C.S. § 708.

¹⁴ *Id.* at § 716.

Public Comment

Section 710.1 of the act allows residents of a political subdivision, or taxpayers in the political subdivision or authority created by the political subdivision, a reasonable opportunity to “comment on matters of concern, official action or deliberation which are or may be before the board or council prior to the taking of official action.”¹⁵ If a reasonable opportunity for comment is allowed before official action, the official action cannot be voided solely on the basis of lack of comment on the action. Also, any person may raise an objection to a perceived violation of the act at any time during a meeting of a board or council of a political subdivision or board of an authority.

The language of the act appears to apply the public comment provisions only to “the board or council of a political subdivision or of an authority created by a political subdivision.” This section also seems to limit the right to public comment to those who reside or pay taxes in the political subdivision, although anyone may object to perceived violations of the act.

Recording Proceedings

Anyone attending a meeting of an agency may record the proceedings, subject to the adoption and enforcement of reasonable rules, if any, by the agency, although the Senate and the House of Representatives may adopt rules regarding the recording and/or broadcast of sessions, meetings, and hearings.¹⁶

Legal Remedies

A proceeding may be brought before the Commonwealth Court for violations of the act by Commonwealth agencies or before the county court of common pleas for violations by any other agency. The action must be brought within 30 days of a meeting that was open to the public, or 30 days from the discovery of a meeting that was not, provided that no more than one year has elapsed since the alleged closed meeting. The court at this proceeding has the authority to find that all official action taken in violation of the act is void, may render a declaratory judgment, or provide injunctive relief. Agencies may cure the violation by ratifying any invalid decisions at a subsequent public meeting.

Concurrently with proceedings before the Court of Common Pleas or Commonwealth Court, a summary offense proceeding may be brought against an agency member before a district justice whereby a conviction of intentionally violating the act would result in fines, plus any costs of prosecution, as follows:

- (1) For a first offense, a fine of at least \$100 and not more than \$1,000.

¹⁵ *Id.* at § 710.1.

¹⁶ *Id.* at § 711.

- (2) For a second or subsequent offense, a fine of at least \$500 and not more than \$2,000.¹⁷

An agency may not make a payment on behalf of or reimburse a member of an agency for a fine or cost resulting from the member's violation of the act.¹⁸

Attorney fees may be awarded to any petitioner when the court determines that an agency "willfully or with wanton disregard" violated the act.¹⁹ Conversely, if the court determines that a frivolous action with no "substantial justification" was brought by a petitioner, the court shall award the prevailing party reasonable attorney fees and costs of litigation or the appropriate portion of the fees and costs.²⁰

¹⁷ *Id.* at § 714.

¹⁸ *Id.*

¹⁹ *Id.* at § 714.1.

²⁰ *Id.*