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## Municipal Newsletter

Spring 2012

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### Exceptions to the Sunshine Act

As opposed to existing under a dictatorship or totalitarian regime as are prevalent in other countries of the world, we reside in a democratic society. Rather than submitting to the tyrannical rule of individuals and groups who have seized control of their respective governments and remain in power indefinitely, we elect officials from among our numbers to govern us for a fixed term. And instead of obeying laws and rules unilaterally executed and forcefully imposed by despots on a whim or to benefit themselves with impunity, we are afforded the right to witness the formation and passage of laws, to participate in their materialization, and to challenge their creation without repercussion.

It is generally accepted by municipalities, municipal authorities and other political bodies that the dictates of the Sunshine Act (65 Pa.C.S.A. Section 701 *et seq.*) are a necessary requirement to promote the democratic process of government. Briefly, the Sunshine Act, as declared in Section 702, is:

the right of the public to be present at all meetings of agencies... to witness the deliberation, policy formulation and decisionmaking of agencies [since it] is vital to the enhancement and proper functioning of the democratic process and... secrecy... undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society. [Thus]... citizens [have the right] to have notice of and... to attend all meetings of agencies at which any agency business is discussed or acted upon [per the Sunshine Act].

But even though the general public is encouraged to attend these meetings, not all aspects of these meetings are open to the public. In this article, we will discuss these exceptions.

The Sunshine Act identifies the various entities bound by the statute as agencies, which are defined as any "body, and any committees thereof authorized by the body to take official action or render advise on matters of agency business, of all the following [as they are applicable to the recipients of this newsletter]: any board, council, authority or commission of the Commonwealth or of any political subdivision of the

Commonwealth..." 65 Pa.C.S.A. Section 703.

65 Pa.C.S.A. Section 707 identifies the three (3) exceptions to the requirement of open meetings, which are: executive session, conference and certain working sessions.

Executive sessions tend to be the most common exception to open meetings. Although Section 708 identifies six (6) reasons for which an executive session may be called, five (5) are applicable to municipalities and municipal authorities.

The first exception is the discussion of matters involving the employment, appointment, termination, terms and conditions of employment, performance evaluation, promotion or discipline of any specific, prospective or current public officer or employee working for, or appointed by the agency. (This is also pertinent to former employees and public officers, however relevant.) An executive session is not permitted for the appointment or selection of a person to fill a vacancy in an elected office. Such persons whose employment is the reason for the executive session, may request in writing that the matter(s) be discussed in an open meeting. However, the agency must consider if discussing the matters in an open session would unfavorably affect the due process rights of the person in question.

The second reason for which an executive session may be called is also related to employment. That is, such sessions may be conducted for the purpose of holding information, strategy and negotiation sessions relative to the negotiation or arbitration of a collective bargaining agreement or for labor relations and arbitration.

The third reason granted by the Act for an executive session pertains to consideration of the purchase or lease of real property.

The fourth concession for an executive session is the discussion with the solicitor or other professional advisor concerning strategy or information related to actual litigation or possible, identifiable complaints in which the agency anticipates being filed.

The fifth reason applicable to municipalities and municipi-

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pal authorities for an executive session is the discussion of agency business which, if discussed in public, would lead to the disclosure of information protected by law, including on-going investigations.

An executive session is not restricted as to when it may be held. Section 708(b) identifies the procedure for calling an executive session. It may be called either during or at the conclusion of an open meeting or at some future time. "If the executive session is not announced for a future specific time, members of the agency shall be notified twenty-four (24) hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session." Regardless, though, whether the executive session precedes or follows an open meeting, the purpose for the executive session must be made known to the public. This purpose must be specified, identifying a real, discrete matter that is better to be addressed in private. When the executive session is called regarding litigation, although the actual litigation is not necessary to announce as for the reason for the session, the general nature of the complaint needs to be given to the public.

Nevertheless, for whatever reason an executive session is called, official action, as defined by the Act, is not permitted. Official action includes recommendations made by an agency pursuant to statute, ordinance or executive order; the establishment of policy by an agency; the decisions on agency business made by an agency; and the vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.

The second exception to the Sunshine Act is the agency's participation in conferences. As defined by Section 703, conferences are "[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."

The third exception of the Sunshine Act, though not commonly exercised, at least at the local level, are certain working sessions. According to the statute:

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 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 chapter. 65 Pa.C.S.A. Section 707(c).

In addition to the aforementioned exceptions to open meetings, confidentiality as delineated in Section 716, is also exempted from the requirement of having the public involved. It states, any "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."

We reside in a democratic society, which allows the people governed by the various political subdivisions to participate in their government. But this is not an absolute right. There are exceptions. The public may not be privy to every facet behind the installation of the rules and orders, ordinances and resolutions of their locations. But as long as they are permitted to witness the official action of their government, the agency is abiding by the requirements of the Sunshine Act.

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