

The Sunshine Act:

What you need to know about public meetings

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March 12-18 is Sunshine Week across the nation, and the annual event underscores the importance of open government. That makes it a great time to explore some common issues with Pennsylvania's open meetings law.

Can a board limit public comment to agenda items only? Must committees hold public meetings? Do I need permission to record a public meeting? How specific should a meeting agenda be, and when must it be provided? Can I have a copy of the board packet so I can follow along with the discussion? What can I do if a government agency isn't following the law?

These are some of the most common questions I hear about the Sunshine Act. I am in-house counsel with the Pennsylvania NewsMedia Association, the statewide trade association representing print and digital media organizations across the commonwealth. Each year I receive about 2,000 questions from news media organizations and at least half deal with public access laws like the Sunshine Act, Pennsylvania's open meetings law.

I also hear from nonmedia folks, likely because there aren't many places to turn for Sunshine Act help. There is no "Sunshine Act police force." The law is citizen-enforced and that means you need to understand it, keep an eye on local government agencies, and take action if the law isn't followed. That is much easier said than done because the law can be difficult to understand and even more difficult to enforce.

The Sunshine Act guarantees your right to witness and participate in the government decision-making process. It applies widely to local elected bodies like school boards, county commissioners, township supervisors, borough and city councils, as well as to non-elected bodies like charter schools, municipal authorities and state government boards like the Liquor Control Board and Game Commission, to name a few. It also applies to the General Assembly, although the rules are a little different in that arena.

The basic rule of the Sunshine Act is simple: Anytime a quorum of an agency discusses agency business or takes official action (votes), it must do so at a public meeting. There are several limited exceptions that allow certain discussions to occur during a nonpublic executive session, but it is important to remember that even if an executive session is allowed, votes can only take place at a public meeting and only after there's been a meaningful opportunity for public comment. The agency should always provide information about a proposed vote so that the public can understand what's being considered and offer public comment *before* decisions are made.

Here's how I answer the questions at the top of this column: Public comment cannot be limited to agenda items only. Committees that render advice or take official action are subject to the Sunshine Act and must hold public meetings. The Sunshine Act, itself, expressly provides a right to record public meetings and no additional permission is necessary. Meeting agendas must be posted on an agency's website (if it has one)

and available in the appropriate government office at least 24 hours before a meeting, with copies available at the meeting. Agendas should provide enough information for the public to understand the specific issues being discussed and acted upon; generic descriptions are not sufficient. Records presented for discussion at a public meeting are expressly public records and should be provided as promptly as possible without unnecessary administrative requirements or delays.

And finally, the most common question: What can I do if I believe the law has been violated? First and foremost, the Sunshine Act allows you to object to a perceived violation of the law at any time during a public meeting. Moreover, an objection must be noted in the minutes. The Sunshine Act also allows a court to impose civil penalties against the agency and criminal sanctions against individual board members for violations.

To pursue an action against the agency, a civil lawsuit is necessary. For local agencies, the county Court of Common Pleas would have jurisdiction and an experienced lawyer is advisable. The need for litigation is one of the reasons the law is difficult to enforce; most folks don't have the time or resources to pursue a lawsuit. The law also has an extremely short statute of limitations: You have only 30 days from the date of a suspected violation to file a lawsuit. And if you manage to make it into court on time, the courts have ruled that the public has the burden of proof to show a violation took place, a significant hurdle since the public has virtually no information upon which to meet that burden.

It is a crime to violate the Sunshine Act, punishable by up to a \$1,000 fine for a first offense, and up to \$2,000 for subsequent offenses. Criminal sanctions may be imposed against individual board members if a court finds an intentional violation occurred. Anyone can file a private criminal complaint with the county district attorney, who will then determine if criminal charges are appropriate.

What else can you do to improve Sunshine Act compliance?

- Take advantage of the free resources offered by the Pennsylvania Office of Open Records (www.openrecords.pa.gov) so you understand your rights and what agencies should and should not be doing.
- Attend public meetings to see whether your local agencies are in compliance.
- Respectfully object if you believe the law isn't being followed and pursue legal remedies if necessary.
- Alert your local media to problems; the power of the pen could be mightier than the power of a Sunshine Act lawsuit.

Finally, contact your state senators and representatives about problems, and let them know that simple changes would improve access for all Pennsylvanians. For example, extending the statute of limitations from 30 days to one year would ease enforcement. Similarly, putting the burden of proof squarely on the agency – which has all the information about an alleged violation – would encourage compliance, make the law easier to enforce, and bring the Sunshine Act in line with Pennsylvania's other primary public access law: the Right-to-Know Law.

The Sunshine Act guarantees your right to a voice in government decision-making before decisions are made, but if the law is not working in your area, it's up to you to ensure local agencies come into compliance. Government functions best when it is aided by an informed and actively involved citizenry.

The Sunshine Act was enacted to keep the doors of government open; our job is to ensure those doors remain open and accessible.