

ALASKA LEGISLATURE, 1983-1984

3045 SSA SB 317 (FILE 2) 8672

(Fla.1972). Accordingly, the question posed by the District Court of Appeal, Fourth District, as stated, should have been answered in the negative.

I therefore most respectfully must dissent.

ROBERTS, J., concurs.



GULF POWER COMPANY, a corporation,
Petitioner.

v.

William H. BEVIS et al., Respondents.

CITY GAS COMPANY OF FLORIDA, a
corporation, Petitioner,

v.

William H. BEVIS et al., Respondents.

FLORIDA POWER & LIGHT COMPANY,
Petitioner,

v.

FLORIDA PUBLIC SERVICE COMMISSION,
Respondent.

FLORIDA GAS COMPANY,
Petitioner,

v.

William H. BEVIS et al., Respondents.

SOUTHEASTERN TELEPHONE COMPANY and Florida Central Telephone Company, corporations, Petitioners,

v.

William H. BEVIS et al., Respondents.
Nos. 44189, 44190, 44198, 44199 and 44201.

Supreme Court of Florida.

June 13, 1974.

Writs of certiorari to review rule of Public Service Commission which provided that in rate proceedings the Commission

would treat as an operating expense so much of state corporate income tax as was necessary to prevent allowable earnings of a regulated company from falling below minimum fair, just and reasonable rate of return allowed by the Commission from time to time. The Supreme Court, Ervin, J., held that such rule would be approved, but with admonitions that word "minimum" be eliminated and that rule must not be applied niggardly in the Commission's rate fixing or in ways that would clearly cripple a utility's capabilities to provide adequate services to its customers or curtail its ability to induce investors to respond to its capital needs.

Decree accordingly.

Boyd, J., concurred specially with opinion.

Overton, J., concurred specially with opinion.

Public Service Commissions C-8

Rule of Public Service Commission which provided that in rate proceedings the Commission would treat as an operating expense so much of state corporate income tax as was necessary to prevent allowable earnings of a regulated company from falling below minimum fair, just and reasonable rate of return allowed by the Commission from time to time, would be approved, but with admonitions that word "minimum" be eliminated and that rule must not be applied niggardly in the Commission's rate fixing or in ways that would clearly cripple a utility's capabilities to provide adequate services to its customers or curtail its ability to induce investors to respond to its capital needs. West's F.S.A. §§ 220.01 et seq., 336.041.

D. Fred McMullen and Lee L. Wilby, Ansley, McMullen, McGehee, Carother & Proctor, Tallahassee, Bert H. Lane, Beggs, Lane, Daniel, Gaines & Davis, Pensacola, and Earl B. Hadlow, Mahoney, Hadlow,

PER CURIAM.

Article IV, Section 22(c) (2) of the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, 32 F.S.A. is hereby amended to read:

(2) upon producing such evidence as the Board may require, that such applicant was in the practice of law in the District of Columbia or in other States of the United States of America, or in practice in federal courts in territories, possessions or protectorates of the United States for at least ten years, and that he was in good standing at the bar of the District of Columbia, the territory, possession or protectorate, or of the State from which he came; and

It is so ordered.

ROBERTS, C. J., and ERVIN, CARLTON, ADKINS, BOYD, McCAIN and DEKLE, J.J., concur.



CITY OF MIAMI BEACH, a Florida municipal corporation and political subdivision of the State of Florida, D. Lee Powell, Norman Clmont, Malvin Englander, Paul Seidorman and Leonard O. Weinstein, as City Councilmen, Petitioners,

v.

Hendrik J. BERNS, Robert W. Swift and Gerry Levin, Respondents.

No. 39503.

Supreme Court of Florida.

Jan. 27, 1971.

Petition was filed to enjoin city, mayor and members of city council from holding meetings of council other than in public and to restrain city from prosecuting petitioner for offense of disorderly conduct

with which he had been charged upon his refusal to leave closed session of city council. The Circuit Court for Dade County, James Lawrence King, J., granted petitioner relief and the city and council members appealed. The District Court of Appeal, 231 So.2d 847, affirmed certifying that questions of great public interest had been passed upon and writ of certiorari was filed. The Supreme Court, Adkins, J., held that when public officials meet at a time and place to avoid being seen or heard by the public to transact or agree to transact public business at a future time in a certain manner they violate the "government in the sunshine" law regardless of whether the meeting is formal or informal.

Writ discharged.

Drew, J. (retired), dissented.

1. Municipal Corporations C-92

Statute which required meetings of a city or town council to be public and which had been interpreted to be applicable only when municipal council was assembled in a formal session attended by quorum was superseded by statute providing that all meetings at which official acts are to be taken are public meetings and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting. F.S.A. §§ 165.22, 286.011; F.S.A.Const. art. 5, § 4(2).

2. Municipal Corporations C-86

When municipal officials meet at a time and place to avoid being seen or heard by public to transact or agree to transact public business at a future time in a certain manner, they violate the "government in the sunshine" law regardless of whether the meeting is formal or informal. F.S.A.Const. art. 5, § 4(2); F.S.A. §§ 165.22, 286.011.

Joseph A. Wanick, Ira M. Elegant and Sam Daniels, Miami, for petitioners.

Daniel ents.

ON RE OR

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Daniel Neal Heller, Miami, for respondents.

ON REHEARING GRANTED AND ORIGINAL OPINION WITHDRAWN

ADKINS, Justice.

Jurisdiction comes to us with a petition for certiorari to review a decision of a District Court of Appeal, which passed upon questions certified by that court to be of great public interest. Fla.Const. art. V § 4(2), F.S.A.; City of Miami Beach v. Berns, 231 So.2d 847 (Fla.App.3rd 1970).

The question presented by the petitioners reads as follows:

"Whether the Third District Court of Appeal erred in holding that the provisions of F.S.A. 286.011, rather than the provisions of F.S.A. 165.22 as interpreted by this court in the Turk case, now apply to all meetings of the city council of a municipal corporation and that such city council can no longer hold informal executive sessions at which the public is excluded for the discussion of condemnation matters, personnel matters, pending litigation or any other matter relating to city government."

We must first determine whether the provisions of Fla.Stat. § 286.011, F.S.A., supersedes or repeals Fla.Stat. § 165.22, F.S.A.

Fla.Stat. § 165.22, F.S.A., reads in part as follows:

"165.22 Meetings of council to be public; penalty—

All meetings of any city or town council or board of aldermen of any city or town in the state, shall be held open to the public of any such city or town, and all records and books of any such city or town shall be at all times open to the inspection of any of the citizens thereof."

There follows a provision for a penalty of two months in jail or a fine not to exceed

one hundred dollars upon conviction of a city official who violates the act. Such a conviction shall also create a vacancy in the office of the offending official. There is no specific provision for enforcement by injunction, nor does a violation of this act invalidate action taken at a closed session.

In Turk v. Richard, 47 So.2d 543 (Fla. 1950), this Court held that the "open meeting" requirement applied only when the municipal council was assembled in a formal session attended by a quorum.

Fla.Stat. § 286.011, F.S.A., reads in part:

"286.011 Public meetings and records; public inspection; penalties

"(1) All meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting." (Emphasis supplied)

This is followed by a requirement that minutes be promptly recorded and open to the public. Circuit courts are authorized to issue injunctions to enforce the statute on the application of any citizens. Violation of this statute constitutes a misdemeanor. Conviction carries a fine up to five hundred dollars and a jail sentence up to six months, or both. No action shall be considered as binding unless taken at a public meeting as prescribed by the statute.

In Board of Public Instruction of Broward County v. Doran, 224 So.2d 693 (Fla.1969), we held that Fla.Stat. § 286.011, F.S.A., was applicable to a county board of public instruction and was not limited to formal meetings. In construing this statute, we said:

"Under the decision in Turk v. Richard, *supra*, it would have been unnece-

essary to include a provision declaring certain meetings as 'public meetings' if the intent of the Legislature had been to include only formal assemblages for the transaction of official business. The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." (p. 698)

[1] We do not overlook the arguments that the right to attend meetings of government bodies did not exist at common law; that the earlier statute dealt with the special subject of municipal meetings; that the two acts should be construed in harmony if possible because repeals by implication are not favored. The rules of statutory construction relied upon by petitioners are cogent but not conclusive. We are persuaded to apply the rule that a statute enacted for the public benefit should be construed liberally in favor of the public even though it contains a penal provision. In this posture a reasonable construction should be applied giving full measure to every effort to effectuate the legislative intent. Board of Public Instruction of Broward County v. Doran, *supra*; George v. State, 203 So.2d 173 (Fla.App.2nd, 1967). The intent of the act as reflected by its language and legislative setting is absorbed into and becomes a part of the law itself. Pillans & Smith Co. v. Lowe, 117 Fla. 249, 157 So. 649 (1934). It appears to us that in enacting Fla.Stat. § 286.011, F.S.A., the Legislature intended a general revision of the law applicable to open meetings of public agencies. In such a situation a later statute operates as a substitute for or repeal of an earlier one. We therefore hold that Fla.Stat. § 286.011, F.S.A., supersedes and repeals Fla.Stat. § 165.22, F.S.A. The former governs the conduct of city councils and other municipal agencies and its provisions are applicable to violations at the municipal corporation level.

[2] The next question to be determined is whether a city council can hold informal

executive sessions at which the public is excluded for the discussion of condemnation matters, personnel matters, per se litigation or any other matter relating to city government.

The Government in the Sunshine Law, Fla.Stat. § 286.011, F.S.A., was enacted in 1967. Since that time the Legislature has not seen fit to repeal, modify, or insert any exceptions in the law. Our duty is to interpret this law as it is written and, if possible, do so in a manner to prevent its circumvention.

The Legislature intended to extend the application of the "open meeting" concept as to bind every "board or commission" of the state, or of any county or political subdivision over which it has dominion and control. This conclusion was first expressed in Times Publishing Company v. Williams, 222 So.2d 470 (Fla.App.2d, 1969), and the Legislature was charged with knowledge of this expression at the time it met during the 1970 session. Nevertheless, the Government in the Sunshine Law was not amended.

We emphasize the following principle expressed in Board of Public Instruction of Broward County v. Doran, 224 So.2d 693:

"The obvious intent was to cover any gathering of the members where the members deal with some matter on which foreseeable action will be taken by the board." (Emphasis supplied) (p. 698)

The question of whether secret sessions could be held concerning privileged matters was definitely determined in Board of Public Instruction of Broward County v. Doran, *supra*. The opinion contains the following:

"The final judgment, inter alia, enjoins the defendant from the holding of any meeting or conference session,

"* * * at which are held any discussions on current, or foreseeably

so, matters not privileged, pertaining to the duties and responsibilities of the Board of Public Instruction of Broward County.'

"Fla.Stat., § 286.011 (F.S.A.) contains no exception. Therefore, this portion of the final judgment is amended so as to read as follows:

"* * * at which are held any discussions on matters pertaining to the duties and responsibilities of the Board of Public Instruction of Broward County.'" (p. 700)

Whether Fla.Stat. § 286.011, F.S.A., should authorize secret meetings for privileged matter is the concern of the Florida Legislature and unless the Legislature amends Fla.Stat. § 286.011, F.S.A., it should be construed as containing no exceptions.

A secret meeting occurs when public officials meet at a time and place to avoid being seen or heard by the public. When at such meetings officials mentioned in Fla.Stat. § 286.011, F.S.A., transact or agree to transact public business at a future time in a certain manner they violate the government in the sunshine law, regardless of whether the meeting is formal or informal.

The Legislature did not intend to muzzle lawmakers and administrative boards to an unreasonable degree. It would be contrary to reason and violate the right of free speech to construe the law to prohibit any discussion whatever by public officials between meetings. The practice of discussing politics and government is part of our American heritage enjoyed by public officials and private citizens. The evil of closed door operation of government without permitting public scrutiny and participation is what the law seeks to prohibit. If a public official is unable to know whether by any convening of two or more officials he is violating the law, he should leave the meeting forthwith.

245 So.2d—31/2

It is the law's intent that any meeting, relating to any matter on which foreseeable action will be taken, occur openly and publicly.

In this area of regulating, the statute may push beyond debatable limits in order to block evasive techniques. An informal conference or caucus of any two or more members permits crystallization of secret decisions to a point just short of ceremonial acceptance.

The majority of the Court is of the opinion that this case should be decided solely upon the question presented by the petitioner and that future problems will have to be met as they arise.

The writ of certiorari is discharged.

ERVIN, Acting C. J., CARLTON and ROYD, JJ., concur.

DREW, J (Retired), dissents.



Clifford Harry BROWN, Petitioner,

v.

STATE of Florida, Respondent.

No. 39671.

Supreme Court of Florida.

Feb. 10, 1971.

The Circuit Court of Record for Brevard County, Cecil R. Rosier, J., convicted defendant of illegal possession of marijuana and denied his motion to set aside judgment to permit him to change his plea from guilty to not guilty, and defendant appealed. The District Court of Appeal, Fourth District, affirmed with one judge dissenting, 234 So.2d 161, and defendant peti-

George PETERS, Plaintiff, Appellant,

v.

BOWMAN PUBLIC SCHOOL DISTRICT

= 1, a public corporation,

Defendant, Appellee.

Civ. No. 9123.

Supreme Court of North Dakota

July 11, 1975.

Rehearing Denied July 30, 1975.

Teacher counselor at high school brought action for injunction to restrain school district from denying him a teaching contract and from seeking to find a replacement for his position. The District Court of Bowman County, William Hogny, J., dismissed action, and plaintiff appealed. The Supreme Court, Pederson, J., held that executive session conducted by school board for purpose of evaluating plaintiff's performance violated the open meetings law and that action taken at subsequent board meeting in voting not to renew contract was void, notwithstanding that such meeting met requirements of the law, and that since statutory dates for contract renewal procedures could not now be met district court was to specify reasonable dates in lieu thereof.

Reversed and remanded.

1. Schools and School Districts ⇨57

Executive session conducted by school district for purpose of teacher evaluation violated the open meetings law. NDCC 44-04-19.

2. Schools and School Districts ⇨133.15

Decision not to renew teacher's contract was illegal where although actual decision to send letter of nonrenewal was taken at open board meeting the reasons for the contemplated nonrenewal were discussed at a prior, invalid executive session. NDCC 15-47-27, 15-47-38, subd. 5, 44-04-19.

3. Schools and School Districts ⇨57

When official action of a school district is clearly the product of an illegal meeting, documented in its minutes, and not clearly denied in the testimony, it is invalid even though taken at an otherwise legal meeting.

4. Schools and School Districts ⇨133.15

Where dates specified for procedures concerning renewal of teacher's contract could not be met, district court, in proceeding challenging school board's nonrenewal decision, was to specify reasonable dates in lieu thereof. NDCC 15-47-27, 15-47-38, subd. 5.

Syllabus by the Court

1. A meeting of a school board to evaluate teachers, held as an executive session, violates § 44-04-19, N.D.C.C. and is void.

2. Official action of a school board which is clearly the product of an illegal meeting, documented in its minutes, and not clearly denied in the testimony, is invalid even though taken at an otherwise legal meeting.

Daniel J. Chapman, Bismarck, for plaintiff, appellant.

T. L. Secrest, Hettinger, for defendant, appellee.

Gerald W. Vandewalle, First Asst. Atty. Gen., Bismarck, amicus curiae.

PEDERSON, Judge.

CASE SUMMARY

This is an appeal by the plaintiff, George Peters, from a judgment granted by the district court of Bowman County on May 28, 1975, dismissing plaintiff's action for an injunction to restrain the defendant school district from denying Peters a teaching con-

tract for the school year 1975-1976, and from seeking to find a replacement for the position held by Peters as a teacher in the Bowman school. After a hearing on an order to show cause, this court entered an order temporarily enjoining and restraining the school district from hiring a replacement and set the matter for oral argument on the merits for July 7, 1975.

The judgment is reversed and the case remanded for appropriate action by the trial court.

FACTS

George Peters has been a teacher-counselor at Bowman High School for twelve years. He was not offered a renewal contract for the 1975-1976 school year.

Portions of the official minutes of the school board pertinent to this case are as follows:

Minutes of the March 4, 1975, meeting state: "The Board then went into Executive Session for teacher evaluation."

Minutes of the March 18, 1975, meeting included the following item:

"Pladsen moved to contemplate a non-renewal contract for George Peters. Fischer seconded it. Voting were: Pladsen—aye; Tarpo—nay; Hinek—nay; Fischer—aye; and Stearns—aye. Motion carried."

Minutes of "a hearing for contemplated non-renewal of contracts" held on April 3, 1975, included the following:

"Mr. George Peters appeared before the Board and he also requested an open hearing. Hinek moved that this hearing be opened to the public and Tarpo seconded it. Voting were: Hinek—aye; Tarpo—aye; Pladsen—nay; Fischer—nay; and Stearns—nay. Motion defeated. The Board presented reasons why they considered the non-renewal of Mr. Peters' contract. After some discussion, the NDEA lawyers requested a continuance of this hearing. Request granted."

Minutes of "a hearing for contemplated non-renewal of contracts" held on April 7, 1975, contains the following entries:

"It was moved by Hinek and seconded by Tarpo that the contemplation of nonrenewing contracts for . . . Mr. Peters . . . be dropped. Voting were: Hinek—aye; Tarpo—aye; Pladsen—nay; Fischer—nay; and Stearns—nay. Motion defeated."

* * * * *

"Mr. Peters appeared before the Board for the continuance of his hearing. He then waived the right to any further hearing."

Minutes of the April 9, 1975, meeting contains the following entry:

"It was moved by Tarpo and seconded by Hinek that George Peters' contract be renewed. Voting were: Tarpo—aye; Fischer—nay; Hinek—aye; Pladsen—nay; and Stearns—nay. Motion defeated."

This action was instituted by Peters on April 23, 1975, and the school district answered, praying for dismissal. The parties stipulated that the case be heard at the May Term of court. The school district was temporarily enjoined from filing the petition held by Peters, pending trial. Trial was held on May 21, 1975, and judgment was entered on May 28, 1975. Peters appealed and a special term was granted by this court to permit arguments on July 7, 1975.

The trial court made the following findings of fact:

"I.

"That the plaintiff, George Peters, is a teacher in the defendant school district and has been such a teacher for the 1974-1975 school year.

"II.

"That on March 18, 1975, the defendant school district voted and decided to con-

template the nonrenewal of plaintiff's teaching contract and sent him notice of such contemplated nonrenewal.

"III.

"That on April 3, 1975, the plaintiff, together with his attorney, appeared at the defendant school district meeting and the defendant school district explained and gave the plaintiff its reasons for the contemplated nonrenewal of his contract.

"IV.

"That on April 9, 1975, the defendant school district decided not to renew the plaintiff's contract by a majority vote."

And the following conclusions of law:

"I.

"That the Court has jurisdiction over all the parties and of the subject matter of this action.

"II.

"That the defendant school district's procedure in nonrenewing the plaintiff's teaching contract was valid under the law.

"III.

"That the complaint of the plaintiff be dismissed.

"IV.

"It is further ordered, that the injunction against defendant be continued for a period of 15 days from the date of this Order and if the North Dakota Supreme Court has not acted during this time, said injunction will automatically terminate."

At the end of the trial, the trial court made the following oral memorandum opinion:

"Well, in this case, as in the other two, the Court's function here is to determine

whether the school board followed the law and the procedure as set out in the law in acting on Mr. George Peters' contract.

"I don't think there is any question that the meeting of March 4th, the latter portion of it where they went into executive session did violate the provisions of Section 44-04-19, under which all meetings of a school board must be open to the public. I think that the precedent that is cited by Mr. Chapman—*Quast v. Knudson*, a Minnesota case, [276 Minn. 340] 150 N.W.2d 199, is valid and any official action taken of the School Board would be void.

"Unfortunately, I wouldn't know what to void. There was nothing voted on. It was all done at a subsequent meeting on March 18th, if I have got the correct date, which was an open meeting and did comply with the law. It's my feeling that once there is an illegal meeting, it can't change every meeting thereafter. I feel that if any one of these motions had been presented at this March 4th meeting, it would certainly render it invalid and the nonrenewal contract would be illegal and he would be reinstated to his position. The official action was March 18th, which was a legal meeting.

"It is the finding of the Court that the school board did follow all of the provisions of Section 15-47-27 and the school board did follow all the provisions of 15-47-38, particularly subsection 5; and that the procedure in not renewing Mr. Peters' contract was valid.

"They did discuss with him the reasons for his nonrenewal and they related to the ability, competence and qualifications of a teacher as a teacher as required by the Supreme Court in the case of *Ming v. Wildrose School Board* [N.D.] 217 N.W.2d 781.

"We have not gone into the validity or invalidity of these reasons. They may be trumped-up charges, or they may be just as valid as a man can say. We have no

way of knowing, nor do we go into that at a hearing of this kind. That is a discretionary matter left up to the school board. The school board members are elected officials. They must discharge their duties. They have to use their discretion in how they vote. The only ones they answer to is the voters. If they follow the law they don't have to answer to the Court any further than just following the proper procedure and doing things in a legal manner. I don't see anything that's been wrong here.

"It's the conclusion of the Court here that the action of the school board in not renewing the contract of George Peters is valid and the Complaint is dismissed."

(The remaining portions of the memorandum opinion do not relate to any issue before us.)

ISSUES

Peters describes the issues as:

1. Does the failure of the school board to take action approving the giving of a letter of contemplated nonrenewal to a teacher at a valid meeting of the board vitiate the entire nonrenewal procedure?

2. Where the entire discussion concerning the evaluation of a teacher and the reasons for the contemplated nonrenewal is conducted at an invalid "executive session" of the school board but the actual decision to send the letter of nonrenewal is taken at a later open meeting of the board, is the sending of the letter of contemplated nonrenewal a valid action of the board?

DECISION

I and II

The two issues stated by Peters are so interrelated we find it unnecessary to answer them separately.

[1] Everyone concedes that the executive session conducted by the school district on March 4, 1975, for the purpose of teacher evaluation violated § 44-04-19, N.D.C.C. The trial court so held.

[2,3] The minutes of the March 4 meeting, and the testimony at the trial, clearly indicate that an official board meeting was closed and that its purpose was "teacher evaluation." The superintendent and the principal made recommendations on rehiring and stated reasons.

The first official action taken upon these recommendations, without disclosure or discussion, occurred at the open meeting on March 18, 1975.

The trial court's ruling indicated that it could void action only when it is taken at an invalid board meeting. We do not agree.

Without implying that in every case action taken upon the basis of information learned outside of an official and legal board meeting is void, we find the action of the school district in this case a clear attempt to evade § 44-04-19, N.D.C.C.

When the official action of the school district is clearly the product of an illegal meeting, documented in the minutes, and not clearly denied in the testimony, such official action is invalid even though such official action is taken at an otherwise legal meeting.

The provisions of § 44-04-19, N.D.C.C. (requiring that all meetings of public or governmental bodies be open to the public, except as otherwise specifically provided by law) were violated by the school district and the action thereafter taken to not renew the contract of George Peters was void.

The district court, in denying the application for temporary injunction, abused its discretion.

The judgment is reversed and the case is remanded with instructions to the district court to direct the school district to reconsider the action whereby it determined not to renew its contract with George Peters.

[4] If the school district, after reconsideration at an open meeting of the school board, redetermines that Peters should be

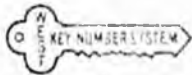
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sent a notice of contemplated nonrenewal, appropriate notice and hearing should be afforded to him pursuant to § 15-47-38(5), N.D.C.C. Because the dates specified for procedures under §§ 15-47-27 and 15-47-38(5), N.D.C.C., cannot now be met, the district court should specify reasonable dates in lieu thereof.

Until such proceedings have been carried out, the school district is enjoined from employing a replacement for Peters.

Because a public question is involved, no costs are allowed on this appeal.

ERICKSTAD, C. J., and PAULSON, SAND and VOGEL, JJ., concur.



STATE of North Dakota ex rel. Bonnie ASKEW et al., Petitioners,

v.

Ben MEIER, as Secretary of State of the State of North Dakota, Respondent.

Civ. No. 9129.

Supreme Court of North Dakota.

July 11, 1975.

Rehearing Denied July 30, 1975.

Petitions were filed to enjoin the Secretary of State from placing on ballot for referral the legislature's ratification of proposed amendment to the United States Constitution popularly known as the Equal Rights Amendment. The Supreme Court, Vogel, J., held that the ratification by the legislature of the federal constitutional amendment was not subject to referendum under state law, and that petitions proposing a referendum of resolution ratifying amendment which were ineffectual for proposed purpose could not be construed to call for a nonbinding plebiscite or straw vote.

Injunction granted.

1. Constitutional Law ⇨10

Ratification of amendment to United States Constitution is not act of legislation, but an expression of assent to proposed amendment and is an exercise of power conferred by the Federal Constitution. U.S.C.A.Const. art. 5.

2. Constitutional Law ⇨10

Congressional selection of legislature as agent of state to ratify or reject an amendment to the United States Constitution does not permit state to ratify by any other method or to review the ratification by referendum. U.S.C.A.Const. art. 5.

3. Constitutional Law ⇨10

Ratification by state legislature of federal constitutional amendment is not subject to referendum under state law. U.S.C.A.Const. art. 5; Const. § 25.

4. Constitutional Law ⇨10

Referendum petitions whose language was indicative of an intent to suspend operation of resolution approving amendment to the United States Constitution were ineffectual to either require a referendum under State Constitution of legislature's ratification of the amendment to the United States Constitution or to authorize a nonbinding plebiscite or straw vote, a procedure not authorized by state constitutional provisions relating to suspending the operation of measure enacted by legislature. Const. § 25.

5. Constitutional Law ⇨91

Plebiscite or straw vote is permissible method by which to petition for redress of grievances under State and Federal Constitution. U.S.C.A.Const. Amend. 1; Const. § 10.

Syllabus by the Court

1. Ratification of an amendment to the United States Constitution is not legis-

not a proposed action may have a significant environmental effect and for assessing typical associated effects of actions found likely to require the preparation of an EIS (ECL 8-0113, subd. 2 pars. [b] and [d]). The regulation in question (6 NYCRR 617-11(b)) is not irrational or arbitrary. Rather it is clearly consistent with the legislative intent of establishing a policy of comprehensive assessment of all related projects at an early stage of review as opposed to an uncoordinated, individual review of projects or permit applications (see ECL 8-0103, subs. 5, 9; ECL 70-0103, subd. 5; ECL 70-0117, subs. 1(b), 2).

[3,4] The determination of whether a proposed action may have a significant impact on the environment is a matter for the exercise of discretion by DEC (ECL 8-0109, subd. 4). There is a relatively low threshold for requiring an EIS, and where the record establishes that the agency identified relevant areas of environmental concern, took a "hard look" at those concerns and made a reasoned elaboration of the basis for its positive declaration, that determination must be confirmed (see *H.O.M.E.S. v. New York State Urban Dev. Corp.*, 69 A.D.2d 222, 232, 418 N.Y.S.2d 827). The DEC has met those requirements.

[5] Special Term erred in making findings contrary to those of DEC with respect to the short-term environmental effects of the mining operation itself. There is a rational basis for that aspect of the positive declaration and the court should not substitute its own judgment (*Matter of Pell v. Board of Educ.*, 34 N.Y.2d 222, 231-232, 356 N.Y.S.2d 833, 313 N.E.2d 321). The fact that DEC has included the potential effect of the proposed subdivision by Charles Realty as part of its consideration of the environmental impact of the mining operation is consistent with the policy articulated in the statute and is not arbitrary, capricious or an abuse of discretion.

[6,7] Finally we note that even if DEC had abused its discretion in requiring an

process the application, but not to issue a permit. It is only after DEC gives the required notice of the application and holds a public hearing, if appropriate, (see ECL 70-0109, subd. 2; ECL 70-0119, subd. 1; 6 NYCRR 621.7 and 621.8), that a final determination can be made.

Judgment unanimously reversed without costs and petition dismissed.



82 A.D.2d 65

In the Matter of the Application of
Lucille BRITT, et al., Respondents,

v.

The COUNTY OF NIAGARA, The Niagara County Legislature, Edward D. Lewis, Anthony F. Quaranto, Dominic L. Penale, Walter Fedak, Arthur V. Curcione, Daniel J. White, Henry J. Buchalski, Doris Skinnington, Lloyd J. O'Connor, Joseph J. Tyree, James A. Sacco, Russell C. Parker, Anthony J. Manna, Dr. John H. George, Bronislaus Pienta, John Chiasera, Richard M. Shanley, Russell C. Parker, Chairman, Niagara County Legislature, Whitney E. Barnum, Clerk, Niagara County Legislature, John V. Simon, County Attorney, Morton H. Abramowitz, Asst. County Attorney, Appellants.

Supreme Court, Appellate Division,
Fourth Department.

June 26, 1981.

In Article 78 proceeding, petitioners challenged reappointment of county legislature. The Niagara Supreme Court, Stiller, J., annulled reappointment plan, enjoined county legislature from holding public hearing scheduled on proposed local law, directed legislature to initiate new reappointment plans with full legislator partici-

future reappointment committee or legislative meetings be open to the public on proper notice, and appeal was taken. The Supreme Court, Appellate Division, Schnepp, J., held that: (1) Open Meetings Law was not shown to be inapplicable to meetings, at which county legislators belonging to majority political party discussed reappointment, on basis of contention that they were not meetings of a public body for purpose of conducting public business; (2) such meetings and meeting involving ad hoc legislative committee did not violate Open Meetings Law, in light of fact that no quorum of the legislature was present at any of the meetings; (3) technical violation of Open Meetings Law consisting of failure to conspicuously post public notice in regard to the ad hoc legislative committee's meeting did not warrant the sanctions imposed by trial court; and (4) petitioners were not entitled to relief on theory that their due process rights were violated because reappointment plan was developed without full public participation.

Judgment reversed, and petition dismissed.

Hancock, J., specially concurred and filed opinion.

1. Counties ⇌52

Open Meetings Law was not shown to be inapplicable to meetings, at which county legislators belonging to majority political party discussed reappointment of county legislature, on basis of contention that they were not meetings of a public body for purpose of conducting public business; political caucus exemption did not apply to majority political party's closed session meetings to discuss matters of public business. Public Officers Law §§ 97, subs. 1, 2, 98(a), 103, subd. 2.

2. Counties ⇌52

Meetings, at which reappointment of county legislature was discussed by legislators belonging to majority political party and by ad hoc legislative committee consisting of four members of majority party and

violate Open Meetings Law, in light of fact that no quorum of the legislature was present at any of the meetings. Public Officers Law §§ 97, subd. 2, 98(a).

3. Counties ⇌52

Not every violation of Open Meetings Law automatically triggers its enforcement sanctions. Public Officers Law § 102, subd. 1.

4. Counties ⇌52

Technical violation of Open Meetings Law, consisting of failing to conspicuously post public notice in regard to ad hoc legislative committee's meeting which involved reappointment of county legislature and which was attended by the press, did not warrant imposition of sanctions under which reappointment plans were annulled and legislature was enjoined from holding a public hearing scheduled on proposed local law. Public Officers Law §§ 99, subd. 2, 102, subd. 1.

5. Constitutional Law ⇌274.2(3)

Petitioners were not entitled to relief on theory that their due process rights were violated because reappointment plan for county legislature was developed without full public participation, in light of fact that a reappointment plan had not been enacted, but rather, a resolution called for a public hearing on reappointment plan. U.S.C.A.Const. Amends. 5, 14; Municipal Home Rule Law § 10, subd. 1, par. a(13).

John V. Simon, Niagara County Atty., Lockport, for appellants; Walter Moxham, Lockport, of counsel.

F. Warren Kahn, Niagara Falls, for respondents.

Before SIMONS, J. P., and HANCOCK, CALLAHAN, DENMAN and SCHNEPP, JJ.

SCHNEPP, Justice.

This Article 78 proceeding involves a challenge to the reappointment of the Niagara County Legislature based on 1980

Syracuse County (County) reapportionment plan, as reflected in proposed Local Law, No. 2, 1981, was (1) prepared in violation of the Municipal Home Rule Law (§ 10, subd. 1, par. a, subpar. [13], cl. [c]), which requires utilization of "the latest statistical information obtainable from an official enumeration", (2) planned at closed meetings in violation of the Open Meetings Law (Public Officers Law, art. 7), and (3) prepared in violation of due process. Petitioners challenge the procedure used by respondents (the Democratic majority members of the County Legislature, Edward D. Lewis, a Republican legislator who voted with the majority, the County and assistant County attorneys, and the Clerk of the County Legislature) to develop the reapportionment plan. Petitioners seek a judgment, inter alia, declaring that the proposed local law adopted by the County Legislature was adopted in violation of these statutes and restraining respondents from taking further action on the proposed law. Respondents cross-moved for dismissal.

It appears that the preliminary structuring of legislative district lines and the drafting of a reapportionment plan were first undertaken in October, 1980 under the direction of the County Attorney. As official census data for the County was then unavailable, preliminary data was reviewed and, by February, 1981, some district lines were drawn on County maps. Reapportionment had been discussed at meetings of individual Democratic legislators on March 7, and 21, 1981. At the March 7 meeting the assistant County attorney, Morton Abramowitz, presented a map which was revised from the March 21 meeting to reflect objections raised by the participants. Further objections were raised and it was understood that further revisions to the plan would be attempted. During this time Abramowitz also met and discussed the reapportionment with a group of Republican legislators. After the receipt on April 3, 1981 of the final census data, Russell C.

1. Respondents allege in their answer and return that the April 20, 1981 meeting "was a

political caucus only".

Parker, Chairman of the Legislature, on April 7, 1981 appointed an ad hoc legislative committee, consisting of 4 Democrats and 3 Republicans to bring the reapportionment plan before the Legislature. Parker, a Democrat, also served on the committee. The ad hoc committee's first meeting was held on April 15, 1981 at which, in the presence of the press, Abramowitz presented a proposed reapportionment plan. By a party-line vote the committee passed a motion "that the Resolution calling for the Notice of Public Hearing" on the proposed reapportionment plan be placed on the April 21, 1981 County Legislature meeting agenda. On April 20, 1981 a Democratic caucus¹ was held to evaluate the plan at which 14 of the 16 Democratic legislators, including Parker and 3 other members of the ad hoc committee, were in attendance. At this meeting Abramowitz presented a proposed final plan and submitted maps which incorporated modifications made after the April 15 ad hoc committee meeting. On April 21, 1981 the ad hoc committee again met and the assistant County attorney presented the revised maps and plans, which included additional changes made earlier that day and, after discussion, the plan was approved. The resolution of April 15 calling for a public hearing was then amended to reflect the changes in the reapportionment plan. Later that day the County Legislature approved a resolution setting May 5, 1981 as the date for the public hearing on the proposed reapportionment plan. The votes on all resolutions, except for Lewis' vote, were along party lines.

Following a hearing in the Article 78 proceeding the Trial Court held that the April 20, 1981 caucus, the ad hoc committee meetings, and other meetings of Democratic legislators violated the Open Meetings Law and that the reapportionment plans were developed without due process of law "through proper legislative action". Respondents appeal from the judgment which

1. Respondents allege in their answer and return that the April 20, 1981 meeting "was a

directed that the County and the County Legislature be named parties respondent, annulled the reapportionment plans, enjoined the County Legislature from holding the public hearing scheduled for May 5, 1981 on proposed Local Law, No. 2, 1981, directed the Legislature to initiate new reapportionment plans with full legislator participation and public input for the County, and ordered that all future reapportionment committee or legislative meetings be open to the public upon proper notice.

[1] Initially we point out that the contention of respondents that the meetings of the Democratic legislators were not subject to the Open Meetings Law because they did not constitute meetings of a "public body for the purpose of conducting public business" is without merit. The statutory directives are clear: "Every meeting of a public body shall be open to the general public" (Public Officers Law, § 98 subd. [a]). A public body is defined as "any entity, for which a quorum is required in order to conduct public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation . . . or committee or subcommittee or other similar body of such public body" (Public Officers Law, § 97, subd. 2). Meeting is defined as "the official convening of a public body for the purpose of conducting public business" (Public Officers Law, § 97, subd. 1). In interpreting and applying these provisions the courts have construed the Open Meetings Law liberally and have held that gatherings by a public body to discuss public business fall within its provisions (*Matter of Orange County Pubs., Div. of Ottaway Newspapers v. Council of City of Newburgh*, 45 N.Y.2d 947, 411 N.Y.S.2d 564, 383 N.E.2d 1157; see *Matter of Sciolino v. Ryan*, 81 A.D.2d 475, 440 N.Y.S.2d 795 [1981]; *Matter of Syracuse United Neighbors v. City of Syracuse*, 80 A.D.2d 984, 437 N.Y.S.2d 466). It is of no significance that formal action is not taken or that such gatherings are denominated "work sessions" or "agenda sessions". Moreover, the political caucus exemption

been variously construed and, contrary to respondents' assertion, is inapplicable to closed-session meetings of the majority political party to discuss matters of public business (*Matter of Sciolino v. Ryan*, supra).

[2] The determinative issue is whether a quorum was present at those meetings which allegedly violated the Open Meetings Law. The statutory requirement of a quorum is paramount because the existence of a quorum at an informal conference or agenda session "permits the crystallization of secret decisions to a point just short of ceremonial acceptance" (Adkins, *Government in the Sunshine*, Federal Bar News, vol. 22, No. 11, p. 317) (*Matter of Orange County Pubs., Div. of Ottaway Newspapers v. Council of City of Newburgh*, 60 A.D.2d 409, 416, 401 N.Y.S.2d 84, aff'd 45 N.Y.2d 947, 411 N.Y.S.2d 564, 383 N.E.2d 1157, supra). Since no quorum of the Legislature was present at the caucuses on March 7 and 21, the Trial Court erred in finding that these meetings violated the Open Meetings Law. Furthermore, a quorum of the County Legislature was not present at the April 20 caucus since a quorum of that body constitutes 16 legislators and only 14 were present. Nor was there a quorum of the ad hoc committee at that meeting since a quorum of that committee constitutes 5 members and only 4 were present. Although the Trial Court excluded Parker in its determination as to the number of committee members required to make up a quorum on the ground that he was an ex officio member of the committee and concluded that a quorum constituted 4, even under this construction a quorum was not present because Parker was 1 of the 4 ad hoc members present at the caucus. The court could not exclude Parker to determine the number necessary to constitute a quorum and then include him to conclude that a quorum of the committee was present. Thus, since a quorum was not present at any of these meetings there was no violation of the Open Meetings Law.

[3,4] Although a technical violation oc-

Legislative

History

1959 - 1976

opportunity to present statements, arguments, or contentions in writing, with or without opportunity to present the same orally. The State agency shall consider all relevant matter presented to it before adopting, amending or repealing any regulation.

In any hearing under this section the State agency or its duly authorized representative shall have authority to administer oaths or affirmations, and may continue or postpone such hearing from time to time to such time and at such place as it shall determine.

Sec. 8. Right to Petition. Except where the right to petition for adoption of a regulation is restricted by statute to a designated group or where the form of procedure for such a petition is otherwise prescribed by statute, any interested person may petition a State agency requesting the adoption or repeal of a regulation as provided in this article. Such petition shall state clearly and concisely:

- (1) The substance or nature of the regulation, amendment, or repeal requested;
- (2) The reasons for the request;
- (3) Reference to the authority of the State agency to take the action requested.

Sec. 9. Procedure on Petition. Upon receipt of a petition requesting the adoption, amendment or repeal of a regulation pursuant to this article, a State agency shall within 30 days deny the petition in writing or schedule the matter for public hearing pursuant to Sections 5, 6, and 7 of this article.

Sec. 10. Retroactive Action: Limitation. All regulations promulgated by an agency subject to this Act which are primarily legislative in nature shall have prospective effect only. Any regulation adopted pursuant hereto which is primarily an "interpretative regulation" shall have retroactive effect only if the agency adopting it has adopted no prior inconsistent regulation or has followed no prior course of conduct inconsistent with said regulation. Silence or failure to pursue any course of conduct shall be deemed prior inconsistent conduct.

Article V

Judicial Review

Section 1. Court Review. Any interested person may obtain a judicial declaration as to the validity of any regulation by bringing an action for declaratory relief in the superior court in accordance with the provisions of the Code of Civil Procedure and in addition to any other ground which may exist, such regulation may be declared to be invalid for a substantial failure to comply with the provisions of this chapter or, in the case of an emergency regulation or order of repeal, upon the ground that the facts recited in the statement do not constitute an emergency within the provisions of Section 2 (2) of Article 4.

Article VI

Agency Meeting Public

Section 1. Agency Meetings Public. All meetings of governing bodies of all State and local government agencies, including municipalities, boroughs, school boards and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations (advisory or otherwise) of the State or local government, supported in whole or in part by public funds or entrusted with the expending of public funds, except juries and such other agencies as shall be expressly exempt by the Legislature, shall be public meetings, but the public may be excluded only from such portions thereof as deal with matters, the immediate knowledge of which would deleteriously affect the finances of the government unit, or that deal with subjects that tend to prejudice the reputation and character of persons. When meetings are held at which such excepted subjects are to be discussed, the meeting must first be convened as a public meeting, and the question of holding an executive session to discuss matters that come within the two exceptions shall be determined by a majority vote of the agency, and no subjects can be considered at such executive session except those as are mentioned in the motion calling for the executive session, and no action shall be taken at said executive session.



LAWS OF ALASKA

1966

Source:
SCSHB 170

Chapter No.
48

AN ACT

Requiring that the meetings of agencies of the state and its subdivisions be open to the public with certain exceptions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA

* Section 1. AS 44.62.310 is repealed and re-enacted to read:

Sec. 44.62.310. AGENCY MEETINGS PUBLIC. (a) All meetings of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to

discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

(1) matters, the immediate knowledge of which would adversely affect the finances of the government;

(2) subjects that tend to prejudice the reputation and character of any person, provided the person requests a public discussion;

loophole → (3) matters which by law, municipal charter or ordinance are required to be confidential.

(d) This section does not apply to judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding, or to juries, parole or pardon boards.

(e) Reasonable public notice shall be given for meetings required to be open under this section.

(f) Action taken contrary to this section is void.

LAWS OF ALASKA



1968

Chapter No.

78

AN ACT

relating to meetings of public bodies not required to be open to the public.

AS IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding,

(2) juries,

(3) parole or pardon boards,

(4) meetings of a hospital medical staff or meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

Approved by governor: April 6, 1968
Actual effective date: July 5, 1968



LAWS OF ALASKA

1969

Source

HB 32

Chapter No.

AN ACT

Relating to the openness of meetings of public agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

Section 1. AS 44.52.13(1) is amended to read:

(1) This section does not apply to

(1) judicial or quasi-judicial bodies when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff; or

(5) meetings of the governing body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges or discipline.

Staff deleted

Approved by governor: March 13, 1969
Actual effective date: June 11, 1969



LAWS OF ALASKA

1972

Source

SB 253

Chapter No.

98

AN ACT

Relating to public agency meetings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

• Section 1. AS 44.62.310(a) is amended to read:

(a) All meetings of a legislative body or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.

• Sec. 2. AS 44.62.310(c)(1) is amended to read:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

• Sec. 3. AS 44.62 is amended by adding a new section in Article 6 to read:

Sec. 44.62.312. STATE POLICY REGARDING MEETINGS.

(a) It is the policy of the state that

(1) the governmental units mentioned in sec. 310(a) of this chapter exist to aid in the conduct of the people's business;

Chapter 98

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) Sec. 310(b)(1) of this chapter shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.



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Approved by governor: June 2, 1972
Actual effective date: August 31, 1972



LAWS OF ALASKA

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JHB 605 am

Chapter No.

100

AN ACT

Relating to the meetings of the Board of Regents of the University of Alaska; and providing for an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 14.40.160 is repealed and re-enacted to read:

Sec. 14.40.160. BOARD MEETINGS PUBLIC, MEETING NOTICE, PUBLIC FACILITIES. (a) The provisions of AS 44.62.310 apply to meetings of the Board of Regents. All meetings of the board, its committees or subcommittees, are open to the public and press except as otherwise provided in AS 44.62.310(c). The findings of an executive session shall be made a part of the record of the proceedings of the Board of Regents. All records of the meetings and proceedings shall be open to inspection by the public and the press at reasonable times.

(b) The board may determine the time and place of its meetings. However, 30 days notice is required for all regular meetings and 10 days notice is required for special meetings of the board, its committees or subcommittees called under the bylaws or rules of procedure of the board. Emergency meetings may be called without notice.

(c) The Board of Regents shall provide adequate facilities for members of the public to attend the meetings of the board, its committees or subcommittees.

* Sec. 2. AS 44.62.310(a) is amended to read:

(a) All meetings of a board of regents or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but

Chapter 100

not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.

* Sec. 3. This Act takes effect on the day after its passage and approval or on the day it becomes law without approval.



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Approved by governor: June 2, 1972
Actual effective date: June 3, 1972



LAWS OF ALASKA

1976

Source

HB 831 am S

Chapter No.

189

AN ACT

Relating to public meetings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* Section 1. AS 44.62.310(a) is amended to read:

(a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

Approved by governor: June 18, 1976
Actual effective date: September 16, 1976

receive, manage and invest money or property obtained from sources other than the state legislature or by way of federal appropriation.⁸ In addition, the legislature has provided that title and control or possession of land and personal property, other than monies, which are devised, bequeathed or given to the University, shall be taken by the University in its corporate capacity acting through the regents or an authorized agent, and shall be entered in the perpetual inventory of the University.⁹ The board of regents is also authorized to execute leases for mining, agriculture, or other purposes to the lands granted by Congress to the University for the benefit of an agricultural college and school of mines.¹⁰ In addition, the board of regents may select the lands granted to Alaska by the Act of Congress approved January 21, 1929, and may sell or lease such lands.¹¹

→ But the University is also subject to some executive and legislative control. As mentioned, the constitution provides that the regents of the University shall be appointed by the governor, subject to confirmation by the legislature.¹² Furthermore, as has been pointed out, the formulation of university policy as well as the administration and disposition of University property are made subject to legislative enactment. At the beginning of each regular session of the legislature the board of regents is required to make a written report to the legislature showing the condition of University property, all receipts and expenditures, and the educational and other work performed.¹³ In addition, the board must make an annual report to the governor which shall include a statement of all trust funds the University possesses.¹⁴

All monetary gifts, bequests or endowments received for the University expan-

sion program or other uses must be turned over to the Department of Revenue where they are placed in a separate fund.¹⁵ This fund, denominated as a trust fund, shall also include all monies derived by the University from the sale or lease of lands granted by act of Congress. These funds shall be invested by the Department of Revenue in interest-bearing securities as approved by the governor.¹⁶ The proceeds from the sale or lease of lands granted to Alaska for University purposes by acts of Congress shall be deposited in the state treasury by the board of regents.¹⁷ The governor is the person authorized to make all certificates required by law or by regulations of the federal Departments of Agriculture or Interior to entitle the state to grants of money for the benefit of state colleges of agricultural and mechanical arts authorized under acts of Congress.¹⁸

Finally, there is the matter of financing the operations of the University from state funds. In 1974 the total funding of the University of Alaska was over 41 million dollars. Approximately 65 per cent of that amount, 26½ million dollars, was appropriated by the legislature from the state's general fund.¹⁹

[2] Despite the degree of constitutional as well as statutory autonomy the University clearly possesses, we are of the opinion that it must be considered to be an integral part of the state educational system mandated by the constitution. In its constitutional status it stands as the single governmental entity which was specifically created by the people to meet the statewide need for a public institution of higher education. In this light, the University must be regarded as uniquely an instrumentality of the state itself. Unlike other public educational institutions created to meet the

8. AS 14.40.170; AS 14.40.250.

9. AS 14.40.280.

10. AS 14.40.350.

11. AS 14.40.300.

12. Note 7 *supra*.

13. AS 14.40.199.

14. AS 14.40.370.

15. AS 14.40.280.

16. AS 14.40.400.

17. AS 14.40.360.

18. AS 14.40.450.

19. § 17, ch. 147, SLA 1974.

needs of local areas, it exists constitutionally to act for the benefit of the state and the public generally.

We reach this conclusion not only from article VII of the constitution, which we construe to be the expression of the will of the people of this state that there shall be an institution of higher learning within the scope of the constitutional mandate providing for public education, but also from the degree of control over the affairs of the University which is exercised by the executive and legislative branches of our government, and from the financial dependence the University has upon the state.

It is true that the constitution has established the University as a body corporate.²⁰ The fact that the University has had conferred upon it the status of a juristic person is not dispositive, however, of our ruling in this case. There are several reasons why this structural approach may have been taken.²¹ It may have been created as a corporation so as to simplify its transactions with the federal government in accepting grants of lands, and to facilitate its dealings with other persons in leasing and selling the lands it acquires or in conducting general business activities. Also, this corporate status may have been chosen in order to shield the individual members of the board of regents from personal liability in actions which might lead to a judgment for money damages against the University.

Whatever the framers' intentions, we have in the past recognized that corporate status alone is not determinative of the question of whether or not an entity performing public or governmental functions is an agent or instrumentality of the state.

20. Alaska Const. art. VII, § 2.

21. Unfortunately the records from our constitutional convention offer no help in disclosing the thinking of the drafters on this matter.

22. 496 P.2d at 651 n. 4.

23. 376 P.2d at 724.

24. See also *Walker v. Alaska State Mortgage Ass'n*, 416 P.2d 245 (Alaska 1966), where the

In *Alaska State Housing Authority v. Dixon*, 496 P.2d 649, 651 (Alaska 1972), we concluded that ASHA was a "state agency" within the intendment of the Administrative Procedure Act even though it was created as a "public corporate authority." In *Dixon* we also construed the holding in *Bridges v. Alaska Housing Authority*, 349 P.2d 149 (Alaska 1959), to the effect that the Alaska Housing Authority was not the state for purposes of eminent domain proceedings, to mean only that that agency was not "identical" with the state.²²

The same general conclusion was reached in *DeArmond v. Alaska State Development Corp.*, 376 P.2d 717 (Alaska 1962). There we held that the act creating ASDC as an "instrumentality of the state within the Department of Commerce" was constitutional even though it also provided that the agency was a corporation with a "legal existence independent of and separate from the state." We concluded that this latter provision was nothing more than "a declaration of the legal relationship that most corporations have with respect to their creators."²³ Such corporate status did not have the effect of removing ASDC from the Department of Commerce.

Although these decisions are not wholly dispositive of the question before us,²⁴ they are indicative of the fact that this Court has not been disposed to treat independent corporate status as sufficient to require the conclusion that a given entity is not in fact part of the State of Alaska. We recognize that the guideposts for such an inquiry are to be found more in political and functional realities than in organizational formalities.

reasoning of *DeArmond* was followed in concluding that ASMA was not by virtue of its independent corporate nature an agency not within the Department of Commerce.

25. We are aware of the crucial fact that each of these cases dealt with a corporate entity which had been specifically declared in its organic act to be "within" a given executive department of the state. That is not the case here.

that the statute's grant did encompass tidelands adjacent to the subsequently expanded municipal boundaries. The state now brings this appeal.

Initially, we hold that the proper standard of review for us to apply is the "independent judgment" criterion since the only issue before us is a matter of statutory construction.⁵ This was the standard applied by the superior court.

The state presents arguments based upon legislative history, general rules of statutory construction, and public policy. We find these unpersuasive.

The language of AS 38.05.320(b), quoted in note 2 above, does not appear to be ambiguous or doubtful on its face. Certain classes of municipalities, incorporated prior to April 1, 1964, are given a right to adjacent tidal lands, subject to the "preference rights" of certain previous users or developers. The April 1, 1964, date is the date by which the eligible municipality must have been incorporated. Once a city qualifies, its entitlement is to tidelands "between the mean high tide line in, or forming the boundary of, [the municipality], and [the pierhead line, harbor line, or other administratively drawn line]". We think that this

does set a lateral boundary, as well as landward and seaward boundaries, for the tracts, contrary to the state's assertion. Thus, the facial meaning of the statute would indicate that post-April 1, 1964 expansion by cities which were incorporated before April 1, 1964, and are otherwise eligible, clearly creates entitlements to the corresponding tidelands.

This clarity of language, although it does not preclude the court from examining the legislative history proffered by the parties,⁶ does place a greater burden on the state, as the party seeking to dissuade us from giving the statute its apparent meaning, to demonstrate that the legislative history reveals some hidden ambiguity in the legislature's usage of terms, and resolves that ambiguity in that party's favor. Otherwise, the statute should be given its facial meaning.

Here, we find it unnecessary to address the parties' lengthy legislative history arguments in full, as the state has not convinced us that either the language or the legislative history reveals any ambiguity. Each party attempts to extrapolate its desired result from the history of federal, territorial, and state legislation passed concerning Alaska's tidelands.⁷ The fact is that no

5. See *State, Commercial Fisheries Entry Commission v. Templeton*, 588 P.2d 77, 81 (Alaska 1979).

6. If the parties present arguments based on legislative history, the court reads and considers them. We have rejected that formulation of the plain meaning rule which mandates that we must disregard all legislative history if the statute's wording is clear and unambiguous on its face. *North Slope Borough v. Sohio Petroleum Corp.*, 585 P.2d 534, 540 n.7 (Alaska 1978). To do so would overly restrict our inquiry, since reference to legislative history may provide an insight which is helpful to making a judgment concerning what a statute means, *id.* at 540, and since words are necessarily inexact and ambiguity is a relative concept. *United States v. United States Steel Corp.*, 482 F.2d 439, 444 (7th Cir.), *cert. denied*, 414 U.S. 909, 94 S.Ct. 229, 38 L.Ed.2d 147 (1973).

Consideration of the legislative history may demonstrate that an ambiguity, although not apparent on the face of the statute, does exist with respect to the legislature's use of a particular term. However, if not, then we must adhere to the general rule that if the language of a

statute is unambiguous and expresses the intention of the legislature, it should not be modified or extended by judicial construction. *City & Borough of Juneau v. Thiboleau*, 595 P.2d 626, 635 n.31 (Alaska 1979).

Thus, although a facially clear and unambiguous statute does not preclude the court from consideration of the legislative history, it does indicate that the court need not explain its conclusion by reference to that legislative history; the "plain meaning" of the statute provides a sufficient basis on which to rest our decision. Although we reject the fictitious notion that the court does not consider the legislative history, we think it remains true that the court need not address the legislative history in its opinion if the statute, even read in light of that legislative history, remains clear and unambiguous.

7. The steps in the legislative history are the 1957 Act passed by the Territorial Legislature (ch. 184, SLA 1957); the 1957 federal Tidelands Act passed by Congress (Pub.L. 85-302, 71 Stat. 623, 48 U.S.C. §§ 455-455c); the 1959 Act passed by the new Alaska State Legislature (ch. 169, SLA 1959); a 1960 formal Attorney

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economics and business. These studies discuss the utility of various bidding methods under different assumptions concerning future oil prices, costs of exploration and production, and especially the expected field sizes. The Commissioner's knowledge of expected field sizes was derived from geological reports that must be kept confidential pursuant to AS 31.05.035(c) and AS 38.05.035(a)(9).

In addition to these studies, the Commissioner considered eighteen other factors such as the number of bidders, the division of risk between lessees and the state, and development efficiency. In *Kelly v. Zamarallo*, 486 P.2d 906, 912-13 (Alaska 1971), this court acknowledged the complexity of the bidding method determination and the necessity of the Commissioner to "evaluate a number of imponderables within his field of expertise."

B. *Is the Bidding Method for the Dinkum Sands Tracts Substantively Valid?*

[7] The plaintiffs contend that the use of the cash bonus/sliding scale royalty method for the disputed Dinkum Sands tracts does not achieve the objectives found in AS 38.05.180(a)(1) and is thus unreasonable. More specifically, the plaintiffs claim that this bidding method will not maximize economic return to the state. They cite several studies showing that the cash bonus/sliding scale royalty method will maximize economic return to the state only if there are not high quantities of oil in the land. Considering the extremely high bids for the Dinkum Sands tracts and other evidence of commercial quantities of oil in those tracts, the plaintiffs conclude that the Commissioner's choice was inappropriate.

The plaintiffs' argument is untenable. First, this court must review the Commissioner's decision at the time it was made and avoid any postsale analysis. Second, the plaintiffs ignore the studies that strongly support the Commissioner's selection, and they did not have access to the confidential

11. The lessees contend that the disclosure of the confidential information would destroy the

information at the Commissioner's disposal. Finally, the Commissioner had to come to an agreement with the United States on the bidding method for the disputed tracts or not lease the land at all until the title dispute was settled. As the state correctly points out, the maximization of economic recovery is only one of the objectives found in AS 38.05.180(a)(1) and must be balanced against the statute's other objectives.

V. The Alaska Public Meetings Act

The superior court ruled that both the Agency Advisory Committee on Leasing (AACL) and the Joint Federal/State Beaufort Sea Task Force (Task Force) were within the purview of the Alaska Public Meetings Act, and that their actions violated the reasonable notice requirement of the Act. Those requirements are as follows.

(a) All meetings of a legislative body, of a board of regents, or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided in this section

(c) Reasonable public notice shall be given for all meetings required to be open under this section.

(f) Action taken contrary to this section is void.

AS 44.62.310 (emphasis added).

The superior court further held, however, that such violations did not require it to void the lease sale, citing two reasons: first, the court found that it was not the decision

competitive nature of the sale. This contention is supported by the record.

of the AACL or the Task Force to lease the land, but rather that of the Commissioner; second, the court found that the record "reflects that there was opportunity for substantial public input at all stages leading up to the Commissioner's decision, and in fact there was substantial public input." Thus, the court concluded that the violation was harmless and that any ruling should be prospective.

The state and lessees do not object to the court's final conclusion, but contend that the advisory committees were not within the purview of the Act, and, even if they were, the committees complied with the reasonable notice requirement of the Act. Kaktovik claims that the violation was not harmless.

A. Are the AACL and the Task Force Within the Purview of the Act, and if so, were the Reasonable Notice Requirements Satisfied?

[8] The state's claim that the AACL was not empowered to address the lease sale, and that the Task Force did not have important responsibilities, is in conflict with the record. According to Commissioner LaResche and Thomas Cook, the director of the Division of Minerals and Energy Management, the AACL was originally founded to formulate the mitigating measures for another lease sale, but later was given part of the responsibility, along with the Task

Force, to formulate mitigating measures and stipulations for the Beaufort Sea lease sale. Thus, it appears that the AACL and the Task Force were "advisory" committees within the meaning of the Public Meetings Act.

The state also contends that by including a representative from the North Slope Borough on the AACL, adequate public notice was given. However, according to an affidavit given by that representative, he did not give notice of the meetings to the villages of Kaktovik, Iglood or Barrow. Of the numerous meetings held by these committees, notice was given in only several instances.¹²

B. Was the Violation Harmless?

[9] Kaktovik argues that it does not matter that the ultimate decision to lease the land was made by the Commissioner. The Act should be read to "void a decision based upon the work of an advisory committee." Furthermore, Kaktovik claims that the Commissioner was not truly independent from the AACL in light of the fact that he was co-chairman of that committee. Thus, considering the strong public policy behind the Public Meetings Act,¹³ the Commissioner's decision should be struck down.

Kaktovik's claim that the Commissioner's decision was not made independently from the AACL and the Task Force is refuted by the record.¹⁴ The Commissioner received

12. However, as the state points out, it is arguable that a strict public notice requirement applied to every meeting of advisory committees such as these would interfere with the administrative process. The legislative history is silent on this point.

13. AS 44.62.312 provides in pertinent part:

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

14. The fact that there is evidence indicating the Commissioner made his decision independently of the advisory committees distinguishes this case from *Town of Palm Beach v. Gradison*, 296 So.2d 473 (Fla.1974).

In *Gradison*, the town council appointed a citizen's planning committee to advise the council on the formulation of zoning ordinances. Although the council held a public meeting to announce their final decision, the court held that since the advisory meetings were closed to the public and in violation of the Public Meetings Act, the adopted zoning ordinance was void. However, in a later decision, the court clarified the *Gradison* case, stating that the council in *Gradison* approved the ad-

advice and studies from various state biological resource agencies as well as from OCSEAP scientists regarding possible mitigating measures and stipulations for the lease sale.

The record also supports the superior court's conclusion that there was opportunity for substantial public input concerning the lease sale, and in fact there was such input. In March 1976, the state held the first public hearings regarding the Beaufort Sea lease sale. On March 3, 1978, a call for nominations for the proposed lease sale was issued in the Federal Register. Nominations and comments were requested and received from the North Slope Borough, Kaktovik and Nuiqsut, concerning which tracts should not be included in the sale. Following the call for nominations, a formal tract selection meeting was held in Washington, D. C., on June 13, 1978, which included representatives from the North Slope Borough.

In May and June of 1979 the AACL held public hearings in Barrow, Nuiqsut, and Kaktovik to solicit comments from officials and residents regarding the DEIS and especially the proposed lease stipulations. Prior to the issuance of the JF/SID, the Division of Minerals and Energy Management met with representatives of the North Slope Borough on October 16, 1979 to discuss the content of that document. Finally, more than 100 written comments were received as a result of solicitation by news releases,

visory committee's recommendation in a "purely ceremonial public meeting." See *Occidental Chem. Co. v. Mayo*, 351 So.2d 336, 342 (Fla. 1977). Furthermore, *Gradison* did not involve the overall public input discussed in the following section.

15. Alaska Rule of Civil Procedure 19 provides in pertinent part:

Rule 19. Joinder of Persons Needed for Just Adjudication.

(a) Persons to Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction . . . shall be joined . . . if . . . (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest . . .

federal register notices, and distribution of the DEIS.

Accordingly, we affirm the superior court's ruling that there was insufficient ground upon which to hold the Commissioner's decision void. ←

VI. Is The United States an Indispensable Party?

[10] The state and the United States contend that the superior court erred in finding that the United States was not an indispensable party.¹⁵ Since the relief given by the superior court covers tracts whose ownership is disputed by the State of Alaska and the United States, the latter claims its interests are adversely affected. Since the superior court did not tailor its relief to protect the absent party, and considering that it could not be joined because of sovereign immunity, the United States claims it should have been considered indispensable.

In *State, Department of Highways v. Crosby*, 410 P.2d 724 (Alaska 1966), this court elucidated the test for determining when a party is indispensable:

An indispensable party is one whose interest in the controversy before the court is such that the court cannot render an equitable judgment without having jurisdiction over such party. The determination of indispensability or lack of it involves a discretionary balancing of interests. On the one hand, consideration must be given to the possibility of render-

(b) Determination by Court Whenever Joinder Not Feasible. If a person as described in subdivision (a)(1)-(2) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to him or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

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38 ALR3d 1052-1065

§ 1 [38 ALR3d 1054]

[b] Related matters

71 Am Jur 2d, Specific Performance §§ 150, 151.

Specific performance of agreement to lend or borrow money. 82 ALR3d 1116.

Requirements as to certainty and completeness of terms of lease in agreement to lease. 85 ALR3d 414.

Complaint, petition, or declaration—for specific performance of contract to lease realty. 22 Am Jur Pl & Pr Forms (Rev ed), Specific Performance, Form 131.

5 Am Jur Proof of Facts 2d 371, Responsibility for Delay In Completing Building Construction, n.

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§ 4 [38 ALR3d 1057]

[a] Failure to complete at all

In action for breach of contract for failure of lessor to construct theater building for lessee, specific performance would not be denied on grounds that lessee had an adequate remedy at law where no issue was raised as to good faith of lessee. Easton Theaters, Inc. v Wells Fargo Land & Mort. Co. (1979, Pa Super) 401 A2d 1333.

§ 5 [38 ALR3d 1059]

[a] Failure to complete at all

See Easton Theaters, Inc. v Wells Fargo Land & Mort. Co. (1979, Pa Super) 401 A2d 1333, § 4[a].

38 ALR3d 1070-1092

§ 1 [38 ALR3d 1072]

[b] Related matters

56 Am Jur 2d, Municipal Corporations, Counties, and Other Political Subdivisions § 161.

What land is contiguous or adjacent to municipality so as to be subject to annexation. 39 ALR3d 589.

Abstention from voting of member of council.

Zoning: validity and construction of provisions of zoning statute or ordinance regarding protest by neighboring property owners. 7 ALR4th 732.

What are "exceptional circumstances" under Freedom of Information Act provision (5 USC § 552(a)(6)(C)) permitting court to grant additional time to federal agency to review records and comply with requests for information under Act. 38 ALR Fed 701.

What constitutes "unwarranted invasion of personal privacy" for purposes of law enforcement investigatory records exemption of Freedom of Information Act (5 USC § 552(b)(7)(C)). 52 ALR Fed 181.

What are "enforcement proceedings" within Freedom of Information Act exemption from disclosure of investigatory records that would interfere with enforcement proceedings (5 USC sec. 552(b)(7)(A)). 55 ALR Fed 583.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of identity of confidential source and, in specified instances, of confidential information furnished only by confidential source (5 USC sec. 552(b)(7)(D)). 59 ALR Fed 550.

Fed Proc. L. Ed § 2:40

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§ 3 [38 ALR3d 1074]

[a] Under constitutional "due process" provision

See People ex rel. Dilanis v Barr (1979) 78 Ill App 3d 842, 34 Ill Dec 223, 397 NE2d 895, § 3[b].

Criminal charges of "official misconduct" against two county commissioners, who conscientiously excluded third commissioner from meeting with administrative officer to discuss staff-reorganization plan, were dismissed, where criminal statute was void for vagueness because it was unclear whether subsequently broadened definition of "meeting" was intended to be incorporated in criminal statute. State v Conrad (1982, Mont) 643 P2d 236.

In action challenging conviction of members of City Board of Trustees for violating public meeting statute, wherein court noted that there was conflicting evidence as to whether any

meeting statute; moreover, despite defendant's contention that open meeting statute was vague in defining role of public body in giving notice, recording minutes, and adhering otherwise to mandates of law, statute was upheld as constitutional and defendant's claims were found to be without merit. Court also rejected defendant's allegation that there was no proof of criminal intent, since record was deemed to have disclosed that failure to comply with public meeting statute was willful; furthermore, irrespective of issue of proof of criminal intent, court held that proof of criminal intent was not required as matter of law, since violation of public meeting statute is classified as in malum prohibitum. Hilliary v State (1981, Okla Crim) 630 P2d 791.

See Dorrier v Dark (Tenn) 537 SW2d 888, reh den (Tenn) 540 SW2d 658, infra § 3[b].

[b] Under other constitutional provisions

Defendants, members of city council, had standing to challenge constitutionality of state open meetings act to extent that they could show that provisions applied to them in their private or official capacity and that they had been injured by application of statute or suffered likely exposure to future injury; statute did not violate equal protection clause on ground that while prohibiting city council from conducting secret meetings, it did not prohibit state legislature from conducting such meetings, where state legislature was subject to even more stringent restrictions on its power to hold secret meetings by state constitution and statutory provisions, and where proper legislative purpose could arguably be served by classification; nor was act invalid on grounds that it compelled violation of attorney-client privilege by forbidding municipal attorney from advising his client in private on merits of bringing or defending litigation except in matters concerning "pending suits", where although act did specify "pending" litigation as exception to general rule of openness of meetings, legislature did not intend that consultations between governing body and its attorney must always be conducted openly, except under aforementioned exception, and such openness could result in public being placed at litigious disadvantage by premature disclosure; in instant case needs for confidentiality, which are foundation of attorney-client privilege, did not require that meeting under litigation be conducted privately, where attorney's presence was not for purposes of discussing prospective litigation or private consultation. People ex rel. Hopf v Barger (Ill App) 332 NE2d 649.

Amendment of Ohio's Constitution of 1850 under state constitution, since these rights protect expression of ideas, and not right to conduct public business in closed meetings. Act was not too vague and ambiguous as to deny due process; furthermore, act did not violate equal protection clauses of United States and state constitutions despite fact act did not apply to general assembly but did apply to other governmental bodies, since rational basis for different classification existed. People ex rel. Dilanis v Barr (1979) 78 Ill App 3d 842, 34 Ill Dec 223, 397 NE2d 895.

Public meeting law was constitutional, notwithstanding contentions that it was void for vagueness, that it abridged free speech, that it was broader than its caption, and that it was arbitrary and unreasonable in failing to allow closed meetings under any circumstances, where (1) phrases "public body" and "to deliberate" were sufficiently clear so that persons of common intelligence did not necessarily have to guess as to their meanings and differ as to phrases' applications, (2) only legitimate "chilling effect upon free expression" that member of covered body could entertain was that deliberation in open meeting of particular matter would be detrimental to public interest which detriment the legislature determined should be assumed in order to secure benefits of open government, (3) all details of public meeting law were germane to object expressed in caption and terms "public," "governmental," and "governing bodies" included in act fell within broader term "government bodies" used in caption, and (4) mere fact that public meeting law failed to provide for any closed meetings was insufficient to declare it unconstitutional. Dorrier v Dark (Tenn) 537 SW2d 888, reh den (Tenn) 540 SW2d 658. *NOTE*

§ 4 [38 ALR3d 1075]

See Dozier v Norris (1978) 243 Ga 230, 244 SE2d 853, § 6[f].

See Brown v East Baton Rouge Parish School Bd. (1981, La App) 405 So 2d 1148, § 6[c].

See Wexford County Prosecuting Attorney v Pranger (1978) 83 Mich App 197, 268 NW2d 344, § 6[c].

Although City clearly violated technical requirements of Open Meetings Act by failing to post notice of meeting at City Hall 48 hours in advance and by failing to keep minutes of meeting at which deliberations were held di-

did not appear to have any desire by city to conduct its meeting out of public sight or that it in fact did so. *Arnold Transp. Co. v Mackinac Island* (1980) 99 Mich App 266, 297 NW2d 904.

See *Accardi v North Wildwood*, 145 NJ Super 532, 368 A2d 416 infra § 6[d].

Township council which gave notice of special meeting to approve application for transfer of liquor license to new location to four newspapers four days before meeting violated 48 hour notice requirement of Open Public Meetings Act where it was apparent from publishing schedules of four newspapers to which notices were sent that only one could have published notice 48 hours before scheduled meeting. *Worts v Upper Township* (1980) 176 NJ Super 78, 422 A2d 112.

See *Gutierrez v Albuquerque* (1981) 96 NM 398, 631 P2d 304, § 6[i].

✓ See *Strohmer v Ryan* (1981, 4th Dept) 81 App Div 2d 475, 440 NYS2d 795, § 6[d].

✓ See *Britt v County of Niagara* (1981, 4th Dept) 82 App Div 2d 65, 440 NYS2d 790, § 6[a].

Pursuant to Public Officers Law, town board at open meeting may convene executive sessions only in limited instances, one of which is to discuss proposed, pending, or current litigation upon motion carried by majority of total board membership and identifying general area of subject to be discussed, and such exceptions must be narrowly scrutinized; accordingly, petition, to extent that it sought order declaring that executive session was conducted in violation of Public Officers Law, would be granted where motion to go into executive session did not identify local tavern as subject of enforcement of zoning ordinance, which was pending, proposed or current litigation to be discussed. *Daily Gazette Co. v Town Bd., Cobleskill* (1981) 111 Misc 2d 303, 444 NYS2d 44.

See *Marsh v Richmond Newspapers, Inc.* (1982) 223 Va 245, 288 SE2d 415, § 9.

See *Nageotte v Board of Supervisors* (1982) 223 Va 259, 288 SE2d 423, § 6[b].

See *Danville v Lord* (1982) 223 Va 271, 288 SE2d 429, § 6[b].

§ 5 [38 ALR3d 1075]

See *Pacific Legal Foundation v Council on Environmental Quality* (1980, App DC) 636 F2d 1259, § 6[d].

Chrysler Corporation Loan Guarantee Board was not an "agency" as defined in the federal public meeting statute and was therefore not required to comply with its open-meeting provisions. *Symons v Chrysler Corp. Loan Guarantee Bd.* (1981, App DC) 670 F2d 238.

Government in the Sunshine Act and was enjoined from noncompliance with Act in action by public interest organization. *Symons v Chrysler Corp. Loan Guaranty Board* (1980, DC Dist Coll) 488 F Supp 874.

See *Migliorico v Birmingham News Co.* (1979, Ala) 378 So 2d 677, § 6[c].

Committees of state university board of trustees were required by Freedom of Information Act to permit newspaper reporters to be present at meetings. *Arkansas Gazette Co v Pickens* (Ark) 522 SW2d 350.

Sunshine law did not require that ad hoc advisory committee, created by board of education, and composed solely of members of governing body of district and which contained less than number needed for quorum of governing body, meet in public session in evaluating and interviewing candidates for vacancy on board. *Henderson v Board of Education* (1978) 78 Cal App 3d 875, 141 Cal Rptr 568.

In action by owners of property proposed to be purchased by Denver Urban Renewal Authority, lower court properly held that authority was not subject to public meeting statute where mere enactment of legislation permitting formation of authority did not suffice to make it "state agency or authority" within meaning of statute and enabling legislation described authority only as "body corporate and politic." *James v Board of Comrs.* (1980, Colo) 611 P2d 976.

See *Gillies v Schmidt* (Colo App) 556 P2d 82, infra § 6[b].

Open meeting statute was intended to bind every board or commission of state, or of any county or political subdivision over which it has dominion or control. *Miami Beach v Berns* (Fla) 245 So 2d 38. ~~HAVE~~

Lease of public airport facilities to commercial airlines did not make airlines public representatives for purpose of state statute requiring that meetings of public entities be open to public. *McCoy Restaurants, Inc. v Orlando* (1980, Fla) 392 So 2d 252.

See *Mitchell v School Board* (Fla App D1) 335 So 2d 351, infra § 6[b].

See *News-Press Publishing Co. v Carlson* (1982, Fla App D2) 410 So 2d 546, § 6[d].

Committee of faculty and students which was organized to review allocations of student activity funds by student senate of state university was not required to hold public meetings since it had no authority to take official action. *McLarty v Board of Regents*, 231 Ga 22, 200 SE2d 117.

Committee composed of members of county board of supervisors which was established by board for purpose of considering and making

the subject of the Sunshine Act and was not a committee was made up of employees who voluntarily and in interest of efficiency or "good staff work" met together periodically in performance of their duties preliminary to providing the recommendations, but no statute, ordinance, resolution or other official action by county board designated the committee as public body or subsidiary body. *People ex rel Cooper v Carlson* (Ill App) 328 NE2d 675.

See *Betts v Department of Registration & Education* (1981) 103 Ill App 3d 654, 59 Ill Dec 355, 431 NE2d 1112, § 7[a].

Athletic council that was established by administrative officials of state university to manage and control intercollegiate athletic program and which had responsibility to determine which athletes received university letters, scholarships, and certain other awards was a "council authorized by laws of state" and therefore subject to open meetings statute. *Greene v Athletic Council of Iowa State University* (Iowa) 251 NW2d 559.

See *Wedergren v Board of Directors* (1981, Iowa) 307 NW2d 12, § 7[a].

Meetings of fiscal court, one held at boat club at which was discussed continuing effort of county police to have organization recognized as bargaining agent, and one held with county attorney involving discussions of proposed county ordinance, were in violation of open meetings law; however, fiscal court's meeting with county attorney at which pending litigation was discussed was not illegal. *Fiscal Court of Jefferson County v Courier-Journal & Louisville Times Co.* (1977, Ky) 554 SW2d 72.

Private, non-profit corporation sponsored by city and parish councils and designated as agency to administer anti-poverty programs was public body or authority within meaning of public meeting statute where corporation derived substantially all its support from local, state and federal funds and had considerable policy making authority in administering and distributing funds. *Seghers v Community Advancement, Inc.* (1978, La App) 357 So 2d 626.

High school athletic association was "public body" within meaning of state open-meeting statute requiring that meetings of every "public body" should be open to public. *Spain v Louisiana High School Athletic Asso.* (1980, La App) 393 So 2d 1386.

See *Ridenour v Board of Education* (1981) 111 Mich App 798, 314 NW2d 760, § 6[c].

Open public meetings act applied to meetings of charter commission; which was established to propose improved form of city government to be voted upon by city's electorate; failure of commission to conform with act ne-

to be recommended. *Polillo v Deane* (1971) 71 NJ 562, 379 A2d 211.

See *Accardi v North Wildwood*, 145 NJ Super 532, 368 A2d 416 infra § 6[d].

Meetings of board of trustees of Cornell University, which is both a private university and a land grant college, concerning the four "statutory" colleges which were administered by Cornell but which were part of state university system were required to be open where board was public body within meaning of open-meetings statute and where board conducted public business and performed governmental function for state. *Holden v Board of Trustees* (1981, 3d Dept) 80 App Div 2d 378, 440 NYS2d 58.

See *Orange County Publications Div. of Out-away Newspapers, Inc. v Council of City of Newburgh*, 89 Misc 2d 847, 393 NYS2d 298, mod (2d Dept) 60 App Div 2d 409, 401 NYS2d 84, aff'd 45 NY2d 947, 411 NYS2d 564, 383 NE2d 1157 infra § 6[d].

Meetings of medical advisory committee created by statute for sole purpose of advising state commission with respect to health and medical care services provided by state for needy persons were subject to open meetings law. *MFY Legal Services, Inc. v Tona* (1977) 92 Misc 2d 147, 402 NYS2d 510.

Open meetings law did not apply to meetings of faculty of state supported law school since, even though faculty is authorized to make certain decisions regarding operation of school, faculty is not a "governing or governmental body" where its decisions are subject to review and approval by university's board of governors. *Student Bar Asso. Board of Governors, etc. v Byrd* (1977) 293 NC 594, 239 SE2d 415.

Where city council authorized its police and fire committee to investigate morale and operation of police and fire departments and delegated subpoena power to committee, such committee was "public body" within meaning of Sunshine Law; committee's meetings were not exempt as "meeting to consider the employment of personnel" where discussions pertained to employees of police and fire departments rather than to employees of council or committee itself, and trial court properly permanently enjoined committee from failing to observe law. *Maser v Canton* (1978) 62 Ohio App 2d 174, 16 Ohio Ops 3d 373, 405 NE2d 731, motion overruled.

Meeting of citizens' advisory committee, impaneled to provide information and to assist department of corrections in making recommendations to Board of Corrections concerning proposed locations for a community treat-

not subject to "Open Meeting Law" since, though committee was subordinate entity of parent-entity which came within purview of law, committee was not delegated any decision-making authority either actual or de facto. *Sanders v Benton* (1978, Okla) 579 P2d 815.

See *Berry v Board of Governors of Registered Dentists* (1980, Okla) 611 P2d 628, § 6(b).

Actions by school board leading to and effecting passage of annexation resolution violated open meeting law, where record cast serious doubt on whether timely notice preceded meetings and left no doubt whatsoever that such notice as there was did not meet agenda requirements of statute. *Re Appeal of Order Declaring Annexation etc.* (1981, Okla App) 637 P2d 1270.

Zoning hearing board was required by public meeting law to render its decision at open meeting, since public meeting law applied to all agencies except judiciary. Thus, board's decision was invalid, where it failed to render its decision on application for special exception at public meeting. *Appeal of Emmanuel Baptist Church* (Pa Civlth) 364 A2d 536.

See *Bensalem Township School Dist. v Gigliotti Corp.* (1980, Pa Civlth) 415 A2d 129, § 7(b).

Statute which authorized school boards to hold executive sessions was repealed by public meeting law, notwithstanding that school board statute was not specifically mentioned in repeal provision of public meeting law and notwithstanding that school board statute was amended subsequent to passage of public meeting law, where public meeting law was in irreconcilable conflict with executive session provision of school board statute which was a prior statute and subsequent amendment of school board statute did not deal with subject of open meetings. *Dorrier v Dark* (Penn) 540 SW2d 658.

See *Marsh v Richmond Newspapers, Inc.* (1982) 223 Va 245, 288 SE2d 715, § 9.

See *Nageotte v Board of Supervisors* (1982) 223 Va 259, 288 SE2d 423, § 6(b).

See *Danville v Laird* (1982) 223 Va 271, 288 SE2d 429, § 6(b).

Compliance with minimal notice requirement of "open meeting law" did not satisfy requirement of town zoning ordinance and thus, resolution of town or board of supervisors to repeal zoning ordinance relating to campaign signs was ineffective. *Martin v Wray* (1979, ED Wis) 473 F Supp 1131 (applying Wis law).

§ 6 [38 ALR3d 1077]

[a] Generally

In action challenging non-renewal of two probationary teachers' employment contracts,

wherein teachers contended that private meeting during recess of regularly scheduled board meeting involving president of school district board and school principal and attorney for district was violative of public meeting statute, court held that, inasmuch as public meeting statute requires gathering of quorum of members of public body in order "to propose or take legal action," no violation had occurred, since quorum was not present; as to related contention that board president took "legal action" during recess so as to render compliance with public meeting statute mandatory, court disagreed, citing definition of "legal action" as "collective decision . . . made by a majority of members of a public body." *Boyd v Mary E. Dill School Dist.* (1981, App) 129 Ariz 422, 631 P2d 577.

Hearing officer, appointed under agreement between city and unions to hear grievances of municipal railway employees, was not "legislative body," and hearing was not "meeting," within meaning of statute requiring that all meetings of legislative bodies of local agencies be open to public. *Wilson v San Francisco Municipal Railway*, 29 Cal App 3d 870, 105 Cal Rptr 855.

State statute providing that county commissioners shall sit with "open doors" need not be taken literally, and where testimony indicated that door had been closed at commissioner's meeting only for purpose of reducing noise in meeting room, and that no one had in fact been excluded from the meeting, there had been no violation of statute. *Allen v Board of County Commrs* (Colo) 497 P2d 1026.

Although Public Meeting Law would not prohibit any discussion whatever by public officials between meetings, secret meetings at which officials transact or agree to transact public business at future time violate law, regardless of whether meeting is formal or informal, and if public official is unable to know whether by any convening of 2 or more officials he is violating law, he should leave meeting forthwith. *Miami Beach v Berns* (Fla) 215 So 2d 38.

Secret discussions between school superintendent and individual school board members concerning redistricting and transfer of students to other schools were in contravention of state sunshine law where official action resulting from such discussions was very much a matter of public concern. *Blackford v School Board* (1979, Fla App D5) 375 So 2d 578.

State "sunshine law" which provided "all meetings . . . at which official actions are to be taken shall be open to the public . . ." as well as state constitutional provision that "all official meetings" of board of education must be open, did not preclude board from meeting in private executive unofficial session, either before or

after official open meeting, to discuss subjects exempted from requirement of open meetings. *Deriso v Cooper* (1980) 245 Ga 786, 267 SE2d 217.

Closed meetings of village officials held prior to deliberations on ordinances to permit sale of certain municipal property to developer for construction of low-income housing for elderly did not violate open meetings statute where meetings did not constitute deliberations on developer's proposal, but were opportunity for village officials to express their need and desired requirements for low-income housing and to explore what experienced developer could do for village in this regard. *Lurie v Skokie* (1978) 64 Ill App 3d 217, 20 Ill Dec 911, 380 NE2d 1120.

Borough council could, at closed executive session, discuss whether to take appeals from various property tax adjustment adjudications and retain outside counsel for that purpose; however, resolution calling for executive meeting was inadequate for public meeting statute purposes where it made no mention of fact that meeting would involve discussion whether to pursue appeals; nevertheless, voidable acts made during executive meeting could be ratified by subsequent special meeting called by council. *Houman v Pompton Lakes* (1977) 155 NJ Super 129, 382 A2d 413.

Action taken at regular meeting by municipal governing body which action had not been listed on published agenda was not per se void, in the absence of showing that governing body published agenda calculated to deceive or mislead public. *Crifasi v Governing Body of Oakland* (1978) 156 NJ Super 182, 383 A2d 736.

"Homestead Committee" that developed procedure by which city sold residential property to private citizens for nominal consideration and "Mayor's Task Force on Abandoned Property" reviewed and recommended policies regarding disposition or use of vacant and abandoned properties were public bodies within meaning of open meeting law so that minutes of their meetings were required to be redacted to extent they did not contain matter not required to be made public under Freedom of Information Act; however, since committees had operated either in ignorance of open meeting law or in belief they were not subject to it, and since minutes contained information impinging on privacy of various individuals, minutes were required to be remitted to Supreme Court for its in camera redaction thereof consistent with provisions of Freedom of Information Act. *Syracuse United Neighbors v Syracuse* (1981, 4th Dep) 80 App Div 2d 981, 437 NYS2d 466.

In action challenging reapportionment plan, party caucuses of Democratic members of legislature occurring on March 7, March 21, and

April 20 were held to be valid and not in violation of statute directing that meetings of public bodies to be open to members of public, since no quorum of legislature was present at any of these meetings and since, in absence of quorum, meetings could not be deemed to be conducted by "public body" as required for public meeting statute to be applicable. Moreover, court concluded that technical violation had occurred at ad hoc committee meeting of April 21 inasmuch as no public notice was "conspicuously" posted; however, it was held that, pursuant to statute giving court discretionary authority to void any action failing to satisfy requirements of public meeting statute, lower court erred in voiding all actions of party caucuses inasmuch as press had, in fact, been notified and had attended and where resolution called only for public hearing. *Britt v County of Niagara* (1981, 4th Dep) 82 App Div 2d 65, 140 NYS2d 790.

See *Daily Gazette Co. v Town Bd., Cobleskill* (1981) 111 Misc 2d 305, 144 NYS2d 44, § 4.

Bureau director's decision to issue permit to construct and operate sanitary landfill did not constitute "formal action" subject to public meeting statute, where mere consultation with bureau subordinates did not constitute meeting, vote was not taken, and official policy was not set by bureau director in issuing permit. *Commonwealth, Dept. of Environmental Resources v Steward* (Pa Civlth) 357 A2d 255.

See *Bensalem Township School Dist. v Gigliotti Corp.* (1980, Pa Civlth) 415 A2d 129, § 7(b).

Purported "meeting" of state emergency board in which two members were physically present and two participated by long distance telephone conference call was not meeting within meaning of public meeting statute. *State v Vermont Emergency Board* (1978, Vt) 394 A2d 1360.

[b] Specific kinds of discussions contended to be exception; attorney-client conferences

County board of supervisors did not violate statutory open meeting requirements by conferring privately with county counsel during public meeting at which environmental impact report (EIR) on proposed food processing plant was being considered, where it reasonably inferred that statement by counsel for plaintiffs that EIR before it had significant defects which precluded board from legally approving it was threat of specific lawsuit. Statute did not abrogate evidentiary privilege of attorney-client confidential communications, under which opportunity for private legal consultation was assured for public as well as private clients. *Sutter Sensible Planning, Inc. v Board of Supervisors* (1981, 3d Dist) 122 Cal App 3d 813, 176 Cal Rptr 342.

abuse was subject to public meeting law and, thus, committee's consideration of questions other than those on specific child abuse cases was required to be handled in public meetings, since it was committee of political subdivision of state. Reports and records on child abuse cases could only be considered in executive sessions, as was authorized by public meeting law, since child protection act made such reports and records confidential. Gillies v Schmidt (Colo App) 556 P2d 82.

Where town council convened meeting for "work" session, and upon reaching item on agenda listed as "legal matters" required public to leave without declaring it to be an executive session, statute was violated and injunction would issue. Journal Publishing Co. v Enheld (1974) 31 Conn Supp 392, 373 A2d 193, (citing annotation).

In action to determine whether school board properly abolished employee's position, application, pursuant to public meeting law applicable to school board but only applicable to meetings between two or more public officials, to compel discovery from administrators of conversations with school board attorney was properly denied, where no meeting was involved. Mitchell v School Board (Fla App D1) 325 So 2d 354.

Parole and Probation Commission's decision to appeal order of Division of Administrative Hearing was not formal action that required decision to be reached in open and public meeting pursuant to statute; ratification of legal decisions of formal public meetings would hamper efficient conduct of commission's business and make effective legal representation impossible. Florida Parole Com. v Thomas (1978, Fla App D1) 364 So 2d 480.

See Fiscal Court of Jefferson County v Courier Journal & Louisville Times Co. (1977, Ky) 554 SW2d 72, § 5.

Under statute providing that school board meetings must be open to public, but that the board may recess for closed session or executive meetings as long as no final or binding action would be taken therein, school board's meetings with administrative staff for purposes of discussing school policy need not be open to public as long as no final or binding action is taken at such meetings, and provided that these meetings not be used to defeat purpose of statute. Reeves v Orleans Parish School Board (La App) 264 So 2d 243, rev'd on other grounds (La) 281 So 2d 719.

Where executive session by board of selectmen involved meeting with department heads to discuss salaries of nonunion town employees in preparation for proposed departmental budgets and did not involve discussion of "strategy with respect to collective bargaining,"

within meaning of that exception to open meeting law, session constituted violation of open meeting law. District Attorney for Northwestern Dist. v Board of Selectmen (1981, Mass App) 1981 Adv Sheets 740, 418 NE2d 612.

Closed session of board of regents of university to consider opinion of counsel on certain topics was exempt from open meeting requirements of state sunshine law since public body was privileged to retire to closed session to discuss materials exempt from disclosure under Freedom of Information Act and since written opinion of counsel was "material" which was not required to be disclosed under FOIA, despite fact that state law contained more restrictive exemption which would allow closed session consultation with counsel only regarding specific pending litigation. Booth Newspapers, Inc. v Regents of University of Mich. (1979) 93 Mich App 100, 286 NW2d 55.

See Channel 10, Inc. v Independent School Dist., 298 Minn 306, 215 NW2d 814, infra § 9.

Public meeting law was not applicable to municipal housing authority's conference with attorney, where purpose of conference was to discuss litigation strategy in action then pending in court. Minneapolis Star & Tribune Co. v Housing & Redevelopment Authority (Minn) 246 NW2d 448, rereported.

Housing and Redevelopment Authority was not required by Open Meeting Law to open to public meetings with attorney that were necessary to attain settlement of litigation involving members of authority in their capacity as members of public agency and also, in the case, as an individual. Minneapolis Star & Tribune Co. v Housing & Redevelopment Authority (Minn) 251 NW2d 629.

See Accardi v North Woodwood, 145 NJ Super 532, 368 A2d 416, n. 4 § 6(d).

See Caldwell v Lambton (1978) 161 NJ Super 284, 391 A2d 590, § 7(b).

Public meeting statute did not abrogate principle of attorney-client confidentiality with regard to public bodies; executive session of public body could be held for confidential communication between body and attorney where communication concerned pending investigation, claim, or action, and where disclosure of matters disclosed would seriously impair ability of public body to process claim in public interests. Oklahoma Asso. of Municipal Attorneys v State (1978, Okla) 577 P2d 1349.

Where decision by plaintiff Board of Governors of the Registered Dentists of Oklahoma and plaintiff's attorney to seek judicial relief against defendants, allegedly engaged in unauthorised practice of dentistry, was not reached in public meeting, decision violated Open Meeting Law in that factual predicates for exception under Law, arising when public disclo-

improperly permitted action to proceed. Berry v Board of Governors of Registered Dentists (1980, Okla) 611 P2d 628.

See Marsh v Richmond Newspapers, Inc. (1982) 223 Va 245, 288 SE2d 115, § 9.

County board's motions to go into executive session ("to confer with legal counsel," "for legal counsel," and "for legal counsel and to discuss personnel matters") failed to comply with public meeting statute, but since there were no willful and knowing violations, no civil penalties could be imposed; injunction was not justified where governing body in good faith committed insubstantial violations based on an erroneous construction of statutes; it is not necessary to identify personnel when convening executive session to consider personnel matters. Nagotte v Board of Supervisors (1982) 223 Va 259, 288 SE2d 423.

City council complied with public meeting statute in convening in executive session where, although motion to so convene did not specify which of two agenda items were to be discussed, both agenda items related to actual pending litigation. Danville v Laird (1982) 223 Va 271, 288 SE2d 429.

[c] Discussions relative to personnel

Although acceptance of teacher's letter of resignation was discussed and considered in executive session following a regular board of education meeting, state open meetings law was not violated where decision to accept resignation of teacher was made at regularly scheduled meeting of board. Shirley v Chagrin Falls Exempted Village Schools Board of Education (CAG Ohio) 521 F2d 1329.

Open meetings laws evidence legislative policy that all meetings of municipal governing bodies are to be open to public and that no executive or secret sessions are to be held, except when character or good name of person is involved. Thus, open meeting laws were violated where city council held closed session to consider appointment to board of education since record indicated that "character" or "good name" was not sole discussion at meeting, and since this exception to open meeting laws does not per se include session considering personal matters, even though character or good name may often be issue in such discussions. Migliorico v Birmingham News Co. (1979, Ala) 378 So 2d 677.

City council was permitted to meet in executive session to discuss personal characteristics of applicants for city-manager position under provision in public meeting law which authorized executive sessions for "subjects that tend to prejudice the reputation and character of any person." Kenai v Kenai Peninsula Newspapers, Inc. (1982, Alaska) 612 P2d 1316.

Kenai v. Kenai PENN.

board meeting, even though board meeting had been preceded by executive session and minutes of board meeting did not reflect discussion of matter after board reconvened; statute required only that minutes include accurate description of all matters discussed not description of discussion and minutes of executive sessions were expressly excluded from requirement that they be open to public inspection. Hokanson v High School Dist. (1978, App) 121 Ariz 264, 589 P2d 907.

See Flagstaff v Blecker (1979, App) 123 Ariz 436, 600 P2d 49, § 6(f).

In action by terminated college faculty members alleging defendant's violation of public meeting law, trial court improperly granted plaintiff's motion for summary judgment where record was unclear as to whether defendant's formation of final intent to decline to offer plaintiffs new contracts, constituting "legal action" which by statute had to take place during public meeting, occurred during portion of defendant's first meeting, open to public, or during portion of meeting devoted to executive session; question of whether defendant's second meeting, regarding which no notice was given, was separate meeting or continuation of meeting recessed on prior day was immaterial where statute required giving of notice in either case; at properly noticed third meeting defendant could have adopted and validated ineffective actions taken during previous meetings but summary judgment on issue in favor of plaintiffs was improperly granted where evidence regarding defendant's actions conflicted. Cooper v Arizona Western College Dist. Governing Board (1980, App) 125 Ariz 462, 610 P2d 465.

Members of school board could consider employment matters in closed executive session; certified probationary teachers whose contracts were not renewed were given adequate notice where notice stating renewal of contracts of certified personnel would be discussed was posted at various places and where only 18 teachers were employed by district so that nothing prevented teachers from informing board, prior to executive session, that if their contracts were going to be discussed, they desired that discussion be held in public meeting. McGowan v Patagonia Union High School Dist. (1981, App) 129 Ariz 127.

District board of education's decision not to re-employ teacher was proper where it resulted from a closed meeting permissible under statute to consider dismissal of public employees unless employee requests public hearing, and no such request was made. Greer v Board of Education, 47 Cal App 3d 98, 121 Cal Rptr 542.

School board meeting in executive session with real-estate specialists to discuss their qualifications to assist board in disposing of surplus really did not fall within open-meetings law exception which allowed for closed meetings to consider appointment or employment of public employee where individuals in question were independent contractors and not "employees." *Rowen v Santa Clara Unified School Dist.* (1981, 1st Dist) 121 Cal App 3d 231, 175 Cal Rptr 292.

Where school board at closed executive session elected to begin preparations for legal action to avoid threatened strike of public school teachers, it was not necessary to decide if "sunshine law" had been violated since even if violation occurred, legal action taken pursuant to such meeting would not be invalidated thereby. *Wilmington Federation of Teachers v Howell* (1977, Del Super) 374 A2d 832.

Denial of injunction preventing board of education from implementing certain standards designed to evaluate performance of superintendent of schools which had been formulated in closed meetings was proper where, open meetings law excepted from its requirement those board meetings dealing with matters related to employees, and superintendent was employee within meaning of act; and where adoption of standard was not "final policy decision" within meaning of act so as to require meeting to be open to public. *Goodwin v District of Columbia Board of Education* (Dist Col App) 343 A2d 63.

Members-elect of boards, commissions, agencies, etc., held within scope of public meeting statute. *Hough v Stenbridge* (Fla App) 278 So 2d 288.

Discussions and consultations of chief executive officer with legislative body relative to collective bargaining are exempt from state "sunshine" law. *Winter Haven v Florida Public Employees Relations Com.* (1978, Fla App D1) 358 So 2d 1374.

See *Palm Beach County Classroom Teacher's Asso. v School Bd.* (1982, Fla App 3d) 411 So 2d 1375, § 9.

School board's general discussion in closed session of salary report and recommendations for upcoming school year covering employees who were not within collective bargaining unit and school board's reaching in closed session tentative consensus as to personnel retention and salaries did not violate public meeting law that authorized closed sessions regarding employment matters but prohibited the taking of final action in closed sessions, where collective bargaining was in progress, board would need to have some idea of total budget requirements for compensation of personnel both within and

unit, and board subsequently held public meetings at which board's final actions were taken. *People v Board of Education*, 40 Ill App 3d 819, 353 NE2d 147.

Plaintiff teacher was not discharged by defendant school in violation of state open door law which precluded discharge without public meeting, where statute provided that executive session, closed to public, could be conducted when employee's status was to be discussed, although final action was required to be taken at meeting open to public, and where there was no "final action" by board, since plaintiff's employment was terminated by her own decision after she was given option of transfer or having her employment terminated. *McQueeney v Glenn* (1980, Ind App) 400 NE2d 806.

Under open meeting statute providing that "Meeting" means a gathering in person . . . formal or informal, of a majority of the members of a governmental body . . ., one-on-one interviews with applicants for city manager with fewer than majority of council members in closed sessions did not violate open meeting statute especially since there was no intent to violate statute and council members at all times acted reasonably on their corporation counsel's advice. *Telegraph Herald, Inc. v Dubuque* (1980, Iowa) 297 NW2d 529.

See *Fiscal Court of Jefferson County v Courier-Journal & Louisville Times Co.* (1977, Ky) 554 SW2d 72, § 5.

Injunction was correct where board of education adopted resolution which declared that it would on fourth Monday of each month go into closed session, board's discussion of, *inter alia*, proposed merger of two teachers' associations and that employees at county supported television station might be laid off if court should vote to cut off funding did not fall into exceptions to open meetings law for collective bargaining negotiations or hearings which might lead to dismissal of individual employee. *Jefferson County Board of Education v Courier-Journal* (1977, Ky App) 551 SW2d 25.

University of Louisville Foundation was not public agency within open meetings law where foundation was created by resolution of another public agency rather than by action of municipal legislative body; meeting of foundation was public meeting within meaning of statute where meeting was attended by quorum of members of board of trustees of University of Louisville, admittedly a public agency; meeting of foundation to consider election of members to board of trustees was properly closed session under exception to open meetings statute relating to discussions concerning appointments of individual members. *Courier-Journal & Louisville Times Co v University of Louis-*

School board did not violate statute promoting discussion of appointment of person to public body when it used multiple executive sessions in appointment of superintendent of public schools where superintendent was an employee and not member of a public body. *Parent-Community Alliance for Quality Education, Inc. v Orleans Parish School Board* (1980, La App) 385 So 2d 33, cert den (La) 386 So 2d 1379.

In action brought against parish school board and committee formed to select new school superintendent for alleged violations of open meeting law, which is to be liberally construed toward end of insuring that public business is performed openly, trial court properly held that closed executive sessions conducted under exception to open meeting law for discussion of character, professional competence, or physical or mental health of person exceeded bounds of statutory exemption where committee's actions constituted vote for elimination of certain applicants from consideration during sessions, and also properly held that closed meeting with several committee members present was not "meeting" under statute, where there was no quorum or "walking quorum" present; injunction restraining defendant from further violation of open meeting law was overly broad and would be recast to prohibit defendant from specific conduct which trial court found to have violated open meetings law. *Brown v East Baton Rouge Parish School Bd.* (1981, La App) 405 So 2d 1148.

School committee which considered list of applicants at public meeting for position of superintendent of schools violated open meeting law by failing to disclose names of candidates where committee made no attempt to hold executive session as permitted by statute and record did not indicate disclosure of names would violate any candidate's right of privacy. *Atty. Gen. v School Committee of Northampton* (1978) 375 Mass 127, 375 NE2d 1188.

School committee closed session grievance hearing relating to denial of teacher's request for sabbatical leave was not subject to open meeting law. *Glighione v School Committee of Southbridge* (1978) 376 Mass 70, 378 NE2d 984.

Meeting of school committee, conducted in executive session to discuss salaries and working conditions for certain non-union employees, came within public meeting exemption providing that closed session may be conducted to discuss strategy with respect to collective bargaining if open meeting may have detrimental effect on bargaining where there was evidence that factors involved in setting of salaries for non-union personnel could, if

gaining discussions with those groups. *Atty. Gen. v School Committee of Taunton* (1979) 7 Mass App 226, 386 NE2d 1295 (citing annotation).

City council closed meeting held to discuss city residency policy for city employees was subject to Open Meeting Act, and was not within statutory exception permitting closed sessions for "strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either negotiating party requests a closed hearing." Statute permits closed strategy sessions only when negotiation of labor agreement is in progress or about to commence, and negotiations sessions refer to actual collective bargaining sessions between employer and employees. *Wexford County Prosecuting Attorney v Pranger* (1978) 83 Mich App 197, 268 NW2d 344.

Open Meetings Act precluded board of education from meeting in a closed session for purpose of evaluating the performance of president of junior college and superintendent of education, where though statute permitted closed meeting for purpose of considering "dismissal, suspension or disciplining of" a public employee, there was no basis to anticipate application of dismissal, suspension, or disciplining in this matter. *Ridenour v Board of Education* (1981) 111 Mich App 798, 314 NW2d 760.

See *Channel 10, Inc. v Independent School Dist.*, 298 Minn 306, 215 NW2d 814, *infra* § 9.

In class action brought by teacher's administrator's associations against school district, proceedings by school district which resulted in furloughing of several hundred probationary teachers and reassignment of large number of administrative employees, did not relate solely to individual personnel problems so as to fall within statutory exemption under public meeting law, but instead actions taken at proceedings were policy decisions with respect to programs and administration which should have been decided in open meeting. Mandatory injunction to restrain future violations of public meeting statute was properly denied where there was no proof that school board contemplated, planned, or even threatened to conduct any future meetings in matter violative of statute, and mandatory injunction undoing actions taken by school board was properly denied where actions constituted massive reorganization of programs and personnel of large metropolitan district and to require their undoing would create administrative and fiscal chaos within school district which would adversely affect public interest. *Hudson v School Dist.* (1979, Mo App) 578 SW2d 301 (citing annotation).

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public utilities' bargaining sessions or discussions of negotiations being held pursuant to state labor law were not required to be conducted as open meetings, although board was "public governmental body" within open meetings act, since act was not intended to apply in such manner as to destroy limited bargaining rights of public employees by exposing public employees' thought-processes, and those of employer, to public eye and ear. "hiring and firing" exception to act applied to collective bargaining and not just to discussions involving particular person. State ex rel. Board of Public Utilities v Crow (1979, Mo App) 592 SW2d 285.

See Stoneman v Tamworth School Dist. (NH) 320 A2d 657, infra § 7(b) (citing annotation)

Open meeting statute did not require that newspaper reporter be allowed to attend bargaining sessions between schoolboard and teachers' union committees, though final board approval of contract must be given in open meeting. Talbot v Concord Union School Dist., 114 NH 532, 323 A2d 912 (citing annotation).

In declaratory judgment action seeking determination whether meeting of board of education which was not held in public was in violation of public meeting statute, trial court incorrectly construed language, "personnel matters," in exemption provision of public meeting statute to mean "matters relating to discipline or hiring or dismissal of employee," since literal and commonly accepted meaning of "personnel matters" is not so limited. State v Hernandez (1976) 89 NM 698, 556 P2d 1174.

See Jones v East Windsor Regional Board of Education, 143 NJ Super 182, 362 A2d 1228, infra § 7(b).

School board did not violate open public meetings act when it called for executive session to discuss personnel matters; while 17 employees were entitled to reasonable notice of intention of board to consider their termination, plaintiffs failed to demonstrate any authority on their part to request public meeting on behalf of adversely affected employees. Rice v Union County Regional High School Board of Education (1977) 155 NJ Super 64, 382 A2d 386.

See Houman v Pompton Lakes (1977) 155 NJ Super 129, 382 A2d 413, § 6(a).

Closed meeting at which board of education adopted resolution terminating plaintiff's probationary employment as secretary did not violate public meeting statute, despite failure of board to notify plaintiff of its intention to evaluate her performance. Cole v Woodcreek Lake Board of Education (1977) 155 NJ Super 398, 382 A2d 966.

Fire commissioners who were subject to open-meetings law and who introduced and

adopted resolutions confirming creation of administrator's position at closed meeting violated open-meetings laws, and exception which allowed closed meetings for matters involving employment or appointment of specific prospective public officer or employee was not applicable where no discussion of any specific officer or employee was involved; fact that confirming resolution was adopted at subsequent public meeting in effort to correct open-meeting violation was not sufficient to cure violation since law required that such action be taken de novo and confirming action was merely perfunctory. Oughton v Board of Fire Comis., etc. (1980) 178 NJ Super 633, 429 A2d 1096, aff'd in part and rev'd in part 178 NJ Super 565, 429 A2d 1059.

Closed meeting at which board of education voted to terminate employment of teacher was violation of statute requiring that meetings of public bodies be open to public except for executive sessions of such bodies, where board failed to comply with statute's express conditions precedent to conducting executive session. Hence board's action of termination was nullity. Sauna v Lindenhurst Bd. of Education (1981) 107 Misc 2d 267, 433 NYS2d 976.

See News & Observer Publishing Co. v Interim Board of Education, 29 NC App 37, 223 SE2d 580, infra § 10.

School board properly held closed meetings for purpose of interviewing applicant for position of superintendent of schools, since Open Meetings Law permitted closed sessions for consideration of delicate matters of employment, discipline and dismissal. Godsey v Poe (1978) 36 NC App 682, 245 SE2d 522.

Where Sunshine Law allowed defendant board of education to meet in executive session closed to public when considering renewal of contracts of plaintiff nontenured teachers, further statutory provision allowing plaintiffs to demand "public hearing" did not apply to such sessions but rather pertained to hearings otherwise provided by law, and trial court properly held for defendant in plaintiffs' action alleging wrongful non-renewal. Matheny v Frontier Local Board of Education (1980) 62 Ohio St 2d 362, 16 Ohio Ops 3d 411, 405 NE2d 1041.

See Maser v Canton (1980) 62 Ohio App 2d 134, 16 Ohio Ops 3d 373, 405 NE2d 731, motion overruled, § 5.

Suspension of police officer, during executive session of Board of Supervisor's meeting, for failure to comply with township ordinance requiring police officers to reside within township did not violate sunshine law where suspension was part of board's consideration of charges filed against officer and meeting was authorized by statute. Jeske v Upper Yoder Township (1979, Pa Cmwlth) 403 A2d 1010.

Meeting of city council at which evidence

leading to suspension of police officer for conduct unbecoming a policeman was obtained was not required to be open to public under open-meeting laws where meeting fell within exclusion for investigations which would operate to prejudice of person's reputation. Mellin v Allentown (1981, Pa Cmwlth) 430 A2d 1048.

See Nagotte v Board of Supervisors (1982) 223 Va 259, 288 SE2d 423, § 6(b).

In action alleging wrongful termination of employment, it was held that compliance with requirements of public meeting statute was not required where court characterized special meeting, in which County Commissioners decided to dismiss plaintiff as fire chief, as executive session; statute was held inapplicable to executive sessions when convened to consider appointment, employment, or dismissal of public officer or employee. Kirk v Pierce County Fire Protection Dist. No. 21 (1995) 95 Wash 2d 769, 630 P2d 930.

Portion of regularly scheduled meeting from which members of general public were excluded and during which county commissioners met with local federal official and discussed availability and allocation of CETA funds, including possible promotion and dismissal of current CETA employees, was exempted from operation of open public meetings statute since it involved "matters affecting . . . appointment, employment, or dismissal" of public employee. Post Townsend Publishing Co. v Brown (1977) 18 Wash App 80, 567 P2d 664.

(d) Decisions with respect to particular assemblages; held required to be open to public

Council on Environmental Quality was governmental agency within meaning of federal sunshine statute requiring all meetings of government agencies to be open to public except for certain excepted types of meetings permitted to be closed on individualized and particularized basis, and thus all meetings of council were required to be open to public that involved deliberations and discussions among its members determining or resulting in joint conduct or disposition of official agency business, including meetings involving advice to President. Pacific Legal Foundation v Council on Environmental Quality (1980, App DC) 636 F2d 1259.

Nuclear Regulatory Commission failed to prove that budget meetings were lawfully closed to public, where Sunshine Act contained no express exception for budget deliberations, and where no specific items discussed at meetings were exempt from open meetings requirement so as to justify closing portions of meetings on individual and particularized basis. Common Cause v Nuclear Regulatory Com. (1982) 218 App DC 262, 671 F2d 921.

Board of education superintendent's confer-

ences" were "meetings" within meaning of public meetings statutes, despite facts that no formal action took place during such conferences, where members of board were given advance notice of conferences and most attended, where conferences were held regularly, and where agendas were . . . extensive and included many matters it . . . later acted upon in regular and special public meetings. Bagby v School Dist. 186 Colo 428, 528 P2d 1299.

Public meeting statute was violated by school board and, thus, collective bargaining agreement between school board and teachers' association was void, notwithstanding that agreement was adopted by school board in public meeting, where school board met in executive session with negotiating team to review progress of negotiations and to determine policy and strategy, and board decided in private to make its final offer which was accepted by teachers and subsequently adopted by school board in public meeting. Littleton Education Assn. v Arapahoe County School Dist. (Colo) 553 P2d 793.

Meeting of ten republican members of 15-member board of aldermen with other republicans who were not members of board of aldermen and one non-republican to discuss budgetary matters, was public meeting and not caucus, so that public notice, taking of minutes and recording of votes were required pursuant to state statute. Giordano v Freedom of Information Com. (1979) 36 Conn Supp 117, 413 A2d 493. *- need - have*

Where eleven out of thirteen members of city council who were members of Democratic Party met with city mayor, also a Democrat, to discuss status of efforts then being made in State General Assembly to repeal statutes which provided basis upon which city, through ordinance, was authorized to impose and collect wage tax, plaintiff newspaper was unlawfully denied admission to such meeting. News-Journal Co. v McLaughlin (1977, Del Ch) 377 A2d 358. *- need - have*

Since it was still part of legislative branch of government, county school board acting in quasi-judicial capacity violated public meeting statute when it recessed hearing to reach decision. Canney v Board of Public Instruction (Fla) 278 So 2d 260.

Resolution of citizens' planning commission, adopted at nonpublic meeting of town council, was void ab initio since commission's function reached status of board or commission that in order to act legally must comply with sunshine law. Palm Beach v Gradison (Fla) 296 So 2d 473.

Attempted ratification of invalid contract award by full county commission did not comply with Sunshine Law requirement that notice

ration took place at breakfast meeting between contract applicants' representative and 2 members of commission acting as a committee, and the fact the meeting took place at a public inn did not make it "public" within meaning of statute. Rigelow v Howze (Fla App) 291 So 2d 645.

Indictment that alleged that elected city commissioners met with other city commissioners at meeting not open to public at all times, even though it neither alleged that city commissioner attended said nonpublic meeting as member of city commission nor that meeting was one at which "official acts" were to be taken, was sufficient to charge violation of Sunshine Law. Wollson v State (Fla App) D2) 344 So2d 611.

Public meeting statute was applicable to meetings of citizens group organized by city manager to aid in selection of police chief, when city manager utilized citizens group to assist him, he created "board" under statute and he became "agency" under statute. Krause v Reno (1979, Fla App D3) 366 So 2d 1241.

Open public meetings law applied to parole revocation meetings of parole and probation commission, despite argument that constraints of that law would constitutionally invade clemency prerogatives of executive branch, since any executive commission could be created on conditions of obedience to laws not inconsistent with state constitution and, therefore, Commission was required to open to public all meetings at which official acts were to be taken, including meetings to decide issues of parole and mandatory conditional release revocation. Turner v Wainwright (1980, Fla App D4) 379 So 2d 118.

Ad hoc committee of staff members created to prepare 35-million-dollar budget was required to comply with public meeting statute by giving reasonable notice to public, by meeting in public, and by keeping minutes, although not a board or agency, when governing authority delegated budget responsibility to it, "nature and function of committee reached the status of a board"; while staff is normally not included within public meeting statute, staff members are included while operating on committee which has been delegated authority normally within governing body. News-Press Publishing Co v Carlson (1982, Fla App D2) 410 So 2d 546. - need -

Informal, unofficial caucus of four members of 15-member city council was meeting of legislative body within meaning of statute requiring governmental bodies' meetings to be open to public where public business was deliberated and consensus on public issue was reached. People ex rel. Dilanis v Barr (1980) 83 Ill 2d 191, 46 Ill Dec 678, 414 NE2d 731.

with agenda consisting of multitude of subjects, at which polls were taken on issues, minutes are made of topics discussed, and at which polls are made, except upon formal motion duly made, seconded, and carried, at open meeting, recessing, but not adjourning, in compliance with public meetings law. Reeves v Orleans Parish School Board (La) 281 So 2d 719.

School committee that was holding public hearing on charges against principal of school violated open-meeting statute by going into executive session ostensibly to consider reputation and character of superintendent of school, but in reality as sham device to enable avoidance of public hearing on charges against principal, discharge of principal that was decided in executive session was thus improper and principal would be entitled to salary from time of his discharge until committee's compliance with open-meeting statute for public hearing on whether principal should be dismissed or otherwise disciplined. Pughst v School Committee of Whitman (1981, Mass App) 114 NE2d 613. - need -

Where, pursuant to adjournment, Board of Commissioners convened at 9:00 a.m. where minutes reflected that commissioners and county clerk were present and that subdivision was conditionally approved, and where actual decision was not made until 2:30 in afternoon by vote conducted by telephone, "meeting" took place as defined by open meeting law; due to framework in which meeting was held, i.e., by means of telephone conversation, and due to fact that one commissioner was not informed of meeting, it was not "open" meeting as required under statute. Board of Trustees v Board of County Comrs. (1980, Mont) 606 P2d 1069.

See Pokorny v Schwyler (1979) 202 Neb 334, 275 NW2d 281, § 71(b).

Meeting of town budget committee at which recommendations would be formulated for action by voters at annual town meeting was required to be open to public. Herron v Northwood (NH) 282 A2d 661 (citing annotation).

Zoning board of adjustment, as "public body" within meaning of Sunshine Law that granted public right to witness all phases of deliberation of public bodies (including discussion and evaluation of facts), was required to hold public meeting for its discussion, review, and decision on variance application. Furthermore, private session with solicitor during which board approved variance was not permitted as exception to Sunshine Law's requirement of public meetings where there was no discussion of pending or anticipated litigation or other matters covered by attorney-client privilege, and where deliberations did not deal

by boards were in countervention of law and were void and required reconsideration in open public meeting. Accardi v North Wildwood, 145 NJ Super 532, 368 A2d 416.

Where county planning board originally called for meeting with members of various agencies of three municipalities within county to discuss impact of land developer's proposed housing tracts, and subsequently cancelled meeting when developer claimed right to attend it, second meeting, scheduled two weeks later, and involving similar parties was evidently intended to circumvent provisions of act, and, as nonconforming meeting, was within corrective scope of act; any action taken during meeting would be deemed nullity. Allan-Dean Corp. v Bedminster (1977) 153 NJ Super 114, 379 A2d 265.

See Caldwell v Lambrou (1978) 161 NJ Super 284, 391 A2d 590, § 71(b).

In action against fire district and commissioners, plaintiffs were entitled to injunction to insure future compliance with public meetings act where prior meetings involving annual budget and other fire district matters had been held in private without giving public notice of meeting. Oughton v Board of Fire Comrs. (1979) 168 NJ Super 434, 403 A2d 69.

Two reporters were unlawfully excluded from meeting of members of city council for regularly scheduled "work session" at which were discussed any topics of interest and which were scheduled four days prior to each regular council meeting. Portion of meeting of zoning board wherein members collectively weigh evidence taken during public hearing, apply law and reach conclusion are covered by "judicial or quasi-judicial proceedings" exclusion within "Sunshine Law" statute, and therefore public may be excluded; however, portion of proceedings where zoning board's decisions are announced are non-judicial and must be open to public. Orange County Publications, Div. of Ottaway Newspapers, Inc. v Council of City of Newburgh (1978) 60 App Div 2d 409, 401 NYS2d 84.

Petition stated cause of action under public meetings statute where it was alleged that at closed session meeting, mayor, committee from city council and school board discussed possible sale of junior high school and contemplated applications for funds under Public Works Act, that quorum of board was present and that subjects of meeting were such that they would ordinarily arise at public meeting. Ontario Star Div. of Ottaway Newspapers, Inc. v Board of Trustees (1979, 3d Dep't) 66 App Div 2d 54, 412 NYS2d 927.

Where Democratic majority of members of city council held weekly meetings to discuss

within scope of public meeting statute and that press, public, and sole Republican of council could not be excluded. While Democratic members did not possess power to bind entire council, court concluded that it was unnecessary that such entity have binding authority in order to consider it public body within meaning of public meeting statute, since its determinations affected public and since legislature intended to affect entire decision-making process, not just formal act of voting or execution of official document, in adopting public meeting statute; furthermore, fact that Democratic members of Council described themselves as "political majority" instead of quorum was deemed to raise form over substance, violating spirit of Legislative enactment, and was rejected as unavailing, since it was undisputed that quorum was present at three meetings in which petitioners sought admission. Similarly, contention that meetings in question were "deliberations of political caucuses" in that phrase "political caucuses" should be interpreted to apply to political majority of legislative body regardless of what it discussed, thereby exempting meeting of Democratic members of city council from compliance with public meeting statute, was rejected by court as too expansive definition in light of legislative intent. Sciolino v Ryan (1981, 4th Dep't) 81 App Div 2d 475, 410 NYS2d 795. - need -

City council's informal discussions of city business without intent to transact any such business were not "meetings" governed by Public Officers Law that required every meeting of public body to be open to general public. However, although city's board of zoning appeals could conduct deliberations in private session, that part of its proceedings in which its decision was announced and vote of individual members taken was required to be open to public. Orange County Publications, Div. of Ottaway Newspapers, Inc. v Council of City of Newburgh, 89 Misc 2d 817, 393 NYS2d 298, mod (2d Dep't) 60 App Div 2d 409, 401 NYS2d 84, aff'd 45 NY2d 947, 411 NYS2d 564, 383 NE2d 1157.

"Planning sessions" held by board of education wherein oral reports were received from employees as well as from prospective contractors were not "executive sessions" or "informal gatherings" and should have been open to public under open meetings law. Kanlet v Board of Education (1977) 91 Misc 2d 1105, 399 NYS2d 366.

Public meeting statute was applicable to members of majority political party of city council who traditionally met in closed sessions to discuss matters that were to come before those bodies at public meetings despite conten-

Boots off
Joe J
Barnwell

Legislative Staff may fail here

Sham device case

- have -

entitled to exemption from requirements of statute, since exemption for "political caucus" refers to those meetings at which political and not public business is discussed, and term "conducting public business" within meaning of open meetings law includes discussions of any topics that may come before bodies at regular public meeting. City manager and city clerk had mandatory duty of notifying public and minority member of city council of any and all meetings held for purpose of conducting any public business and had to permit public and minority council member to attend those meetings. *Sciolino v Ryan* (1980) 103 Misc 2d 1021, 431 NYS2d 664. ← *Yeah!*

Board of township trustees' "special session" for which no notice was given and which was held at private residence of a township official did not qualify as public meeting open to the public. *Cust v True*, 39 Ohio App 2d 11, 68 Ohio Ops 2d 149, 314 NE2d 186.

Public meeting statute would be applicable to public service commission hearings where two or more commissioners convene and conduct hearing, but consultations with staff, deliberations or process of making decision would not constitute meeting within statute since quorum is not required at any stage and since convening of governing body is not involved at any stage. Adjudicatory sessions would be exempt under statute since they are quasi judicial proceedings involving notice, presentation of evidence, making of record, examination of witnesses under oath and exercise of subpoena power. *Appalachian Power Co. v Public Services Com.* (1979, W Va) 253 SE2d 377.

[c] —Held not required to be open to public

Federal Freedom of Information Act exemption pertaining to interagency and intraagency memoranda and letters was applicable to documents voluntarily disclosed by agency to members of advisory committee and, thus, advisory committee properly held closed meeting pursuant to Federal Advisory Committee Act, where advisory committee chairman determined that discussions concerned intraagency memorandum. *Aviation Consumer Action Project v Washburn*, 175 App DC 273, 535 F2d 101.

Meeting of the Board of Governors of the United States Postal Service, at which was discussed proposed postal rate commission changes in general revenue requirements which could have given rise to litigation was properly closed to the public, where such meeting fell within language of statutory exemption of "the initiation, conduct, or disposition by the agency of a particular case of formal agency adjudication pursuant to the procedures in § 554 of this title or otherwise involving a determination on the record after opportunity for a hearing" (5

For purposes of sunshine act, in camera hearings of Atomic Safety and Licensing Board to review private report on steam supply system to nuclear reactor, during otherwise open construction permit adjudicatory proceedings, did not violate section requiring deliberations of collegial body heading agency, the NRC in this case, to be open to public where subdivision of agency, the ASLB, did not have two or more NRC members sitting on it; sunshine act requires "meetings" of agency subdivision with two or more agency heads, which is authorized to take action on behalf of agency, to be open to public. *Hunt v Nuclear Regulatory Com.* (1979, ND Okla) 468 F Supp 817, aff'd (1979, CA10 Okla) 611 F2d 332, cert den (US) 63 L Ed 2d 322, 100 S Ct 1084.

Closed meeting of Board of Governors of Federal Reserve System was not violation of federal Sunshine Act (5 USC § 552b), which requires that meetings of executive bodies of federal government be open to public, since Board properly invoked express exemptions from Act's requirements where meeting involved discussion of confidential information concerning financial institutions and Board's strategy in legal proceedings as well as general policy matters, and separation of meeting into closed and open sessions would not have been reasonably possible. However, Act's requirement that notice of meeting be given at earliest practicable time was violated where Board delayed giving notice until after meeting occurred. *A. G. Becker, Inc. v Board of Governors of Federal Reserve System* (1980, DC Dist Col) 502 F Supp 378.

School board did not violate Open Meeting Law in excluding public from meetings of textbook evaluation committee whose membership was not composed of and whose recommendations were not binding on school board. *Washington School District No. 6 v Superior Court of Maricopa County (Ariz)* 541 P2d 1137.

City council did not violate public meetings law where, at conclusion of public hearing on application for rezoning and after all evidence had been presented, council retired into fact-finding session returned to public meeting and by motion containing findings and conclusions denied application unanimously. There was no indication that council did anything other than deliberate upon evidence presented at public hearing, council took no evidence at closed session, nor did council act upon application there, all evidence had been presented at public hearing, and motion denying application was adopted at reconvened public meeting. *Emerson v Wheat Ridge* (1979, Colo App) 604 P2d 691.

Public meeting statute did not apply to execu-

cial action at which, historically, only voting members played roles and judicial atmosphere that assured freedom of expression to each deciding official encouraged free discussion which was essential to frank and impartial deliberation. *Dupont Circle Citizens Asso. v District of Columbia Board of Zoning Adjustment* (Dist Col App) 364 A2d 610.

College president's periodic private meetings with group of college employees designated by president as representatives of college career employees for purpose of discussing various problems and suggestions relating to employees' working conditions did not violate public meeting law applicable to boards and commissions, notwithstanding that president may have carried out directions, orders and policies of a board, where, by definition, president was neither "board" nor "commission," meetings were fact-finding expeditions by president, and designated group of employees was far too remote in decision-making process to have been capable of making policy or decisions anywhere near point just short of ceremonial acceptance by board. *Bennett v Warden* (Fla App D2) 333 So 2d 97.

Administrative committee of state water resource board did not constitute that board's governing body and, thus, the administrative committee was not required by public meeting statute to conduct its business by public hearing, where administrative committee did not have authority to make decisions for or make recommendations to the board, and administrative committee was not entrusted with formation of board's public policies. *Idaho Water Resource Board v Kramer*, 97 Idaho 535, 548 P2d 35.

Utah statute requiring open meetings for public bodies that receive or expend tax funds, City Civil Service Commission whose members received pay from them did not violate open meeting law where their duties did not constitute type of tax receipt and disbursements contemplated under statute, even if it were given radically liberal construction. *Eastwood v Garsaud* (1980, La App) 387 S 2d 682, cert den (La) 393 So 2d 746.

Labor relations commission properly found that city was refusing to bargain in good faith where city held public collective bargaining sessions on basis that executive sessions would violate open meeting law; open meeting law did not require negotiations to be conducted in public. *Board of Selectmen v Labor Relations Com.* (1979, Mass App) 1979 Adv Sects 645, 388 NE2d 302.

State board of education did not violate open meetings law by failing to provide school board with opportunity to respond to report of officer recommending that proposed transfer of

with fair and impartial hearing in accordance with full panoply of procedural safeguards guaranteed by statute; and state board should not allow parties or nonparties to address it concerning merits of contested case at public meeting. *Board of Education v Michigan State Bd. of Education* (1981) 104 Mich App 569, 305 NW2d 541.

Public meeting statute was not violated where, during recess of public meeting called by board of county commissioners, certain commissioners and others present retired to adjoining room, door to which was open at all times with no one being excluded, where informal conversation was had by commissioners and others with reference to agenda item, but where no formal action or vote was taken until board of commissioners reconvened in regular session following recess. *Copple v Lincoln* (1979) 202 Neb 152, 274 NW2d 520.

Where mayor and council of borough held "open caucus meeting" to which members of rent control board were invited, newspaper reporter was properly excluded during discussion of possible rent control ordinance amendment. *Woodcock v Calabrese* (1977) 148 NJ Super 526, 372 A2d 1178.

Meeting between individuals who comprised effective majority of sewerage authority and officials of department of environmental protection to discuss terms of administrative order was not type of meeting within purview of statute. *Woodbury Daily Times Co. v Gloucester County Sewerage Authority* (1977) 151 NJ Super 160, 376 A2d 607.

Meeting of majority of county sewage authority with representatives of Department of Environmental Protection to discuss disposal of sludge was not "public body" within meaning of public meetings statute where purpose of meeting was to inform authority members and not to take official action. *Woodbury Daily Times Co. v Gloucester County Sewerage Authority* (1978) 150 NJ Super 448, 386 A2d 445.

See *Orange County Publications, Div. of Ottaway Newspapers, Inc. v Council of Newburgh* (1978) 60 App Div 2d 409, 401 NYS2d 84, § 6[d].

Board of education committee meetings were not subject to public meeting statute; committees were not "public bodies" since quorum was not required to transact business, and committees did not transact public business since they were not given any authority to make final decisions, but merely made recommendations to entire board. *Daily Gazette Co. v North Colonie Board of Education* (1979, 3d Dept) 67 App Div 2d 803, 412 NYS2d 494.

See *Orange County Publications Div. of Ottaway Newspapers, Inc. v Council of City of*

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Where meeting of town board was conducted for purpose of reaching decision based on evidence submitted at previous public hearing and actual vote was taken and announced at subsequent public meeting, meeting for such deliberation was exempt from Open Meetings Law requirements. *Blick v Webster* (1980) 104 Misc 2d 852, 429 NYS2d 811.

In action challenging closing of institute for indigent and sale of its premises, involving institute that had been established in accordance with testamentary trust of private donor, it was held that trustee meetings of May 14 and June 16, called to consider closing of institute and sale of its premises, were not subject to public meeting statute inasmuch as trustees did not come within definition of public body as required in order to render compliance with public meeting statute mandatory, notwithstanding fact that trustees were appointed by public officials. Moreover, public meeting statute specified that court had discretion not to annul any determination taken at meeting which is later deemed to be in violation of statute. *Burgher v Purrell* (1981) 109 Misc 2d 531, 440 NYS2d 480.

Collective bargaining negotiations between City Manager and Firefighters Local did not fall within Oklahoma Open Meeting Law, where reference to "public body" would be considered to be made up of more than one individual person and "meetings" referred to in Law encompassed meetings wherein a majority of members of public body met personally, and where City Manager was subordinate to City Commissioners and had no authority, either express or de facto, to make binding agreements. *International Asso. of Firefighters v Thorpe* (1981, Okla) 632 P2d 408.

Statute providing for making of public proceedings open to public did not require that proceedings of state board of medical examiners to determine whether physician's license to practice medicine should be revoked be open to public where statute did not apply to deliberations of state agencies conducting hearings on contested case in accordance with provisions of Administrative Procedures Act or to any judicial proceedings. *Spray v Board of Medical Examiners* (1981) 51 Or App 773, 627 P2d 25.

School district was not agency as defined in and for purposes of Sunshine Law, which defined agency as school board or school governing body. *Patterson v Charterer Area School District* (Pa Cmwlth) 349 A2d 813.

School board's discussion of curtailment of school programs and closing of some schools (in accordance with proposal adopted by board at prior public meeting) and its discussion of

with teacher's union, and scheduling of classes was not formal action within purview of Sunshine Law where no official policy had been set and no decision had been reached to any matter, and the extent of action taken was discussion as to whether or not matters should be placed upon agenda of public board meeting. *Judge v Pocius*, 28 Pa Cmwlth 139, 367 A2d 788.

Preliminary to public meeting and final action of commissioners' court to adopt budget, conferences and discussions between district judge and commissioners at which they advise one another but commissioners' court takes no conclusive action do not come within mandatory requirements of Open Meeting Law. *Commissioners' Court of Hays County v District Judge*, 22nd Judicial Dist. (Tex Civ App) 506 SW2d 630, error ref n r e.

In action against State Board of Optometry for violations of Texas Open Meetings Act, executive session called for purpose of seeking attorney's advice with respect to pending litigation was private consultation between governmental body and its attorney, not an emergency session or an item of "urgent public necessity" requiring two-hour premeeting notice, and Board was not required to meet written notice requirements of open emergency and nonemergency meetings. *Rogers v State Board of Optometry* (1981, Tex Civ App 11th Dist) 619 SW2d 603.

See *Appalachian Power Co. v Public Services Com.* (1979, W Va) 253 SE2d 377, § 6(d).

[f] Sufficiency of compliance

Post-termination hearing granted to discharged fireman by city personnel board was subject to open meeting law and substantially complied therewith where meeting was held publicly after notice, and final decision was announced in detailed certificate of findings and recommendations, signed by each member of board who heard fireman's case. *Flagstall v Blecker* (1979, App) 123 Ariz 436, 600 P2d 49.

Agreement entered into between school district and private corporation providing for performance of research and development work and services for a fee did not violate open meeting provisions of statute. *California School Employees Asso. v Sunnyvale Elementary School Dist.*, 36 Cal App 3d 46, 111 Cal Rptr 433.

Banking board's denial of charter was invalid for failure to comply with public meeting law, notwithstanding that notice was mailed to persons on "Sunshine list" and copy of notice was available for public inspection upon request in office of division of banking, where board took no overt action to give public notice of meetings at which vote was taken on application and

"Sunshine Law" did not require that all meetings between public utility commission and its staff be made open to the public, where there was no showing that commission informally adopted staff proposal on rate matter prior to public meeting, law was satisfied when commissioners apparently reached mutual decision on matter at public hearing. *Occidental Chemical Co. v Mayo* (1977, Fla) 351 So 2d 336.

See *Bigelow v Howze* (Fla App) 291 So 2d 645, supra § 6(d).

Fact that city planning commission meetings, because of other activities being conducted in council meeting room at city hall, were held in small crowded office of mayor did not entitle citizen to have certain actions of planning commission declared void as violation of Sunshine Law, absent evidence that any person was excluded from or denied admission to meetings. *Harris v Adams*, 238 Ga 186, 232 SE2d 61.

Georgia "sunshine law" does not require notice to the public of governmental meetings; rather, it merely requires meetings to be open to the public. No violation of "sunshine law" occurred where, though meetings of county commissioners were usually held in county courthouse, commissioners were empowered to convene meetings in other places and meeting objected to, which was held in one commissioner's home, was hurriedly called to avoid loss of state funds and there was no evidence that meeting in question was secret. *Dozier v Norris* (1978) 241 Ga 230, 244 SE2d 853.

In action against city challenging validity of proposed public expenditures for new city hall, trial court erred in granting summary judgment for city on issue of city's compliance with sunshine law where genuine issue of material fact existed as to whether city complied with requirement that notice of meeting be posted 48 hours in advance. *Blim v Marion* (1979, Ind App) 390 NE2d 1066.

See *Reed v Richmond* (1979, Ky App) 582 SW2d 651, § 7(b).

City council was in compliance with Sunshine Law where it posted advance written notice of workshop meetings on city hall bulletin board, together with subject matter of meeting, and where council, in accordance with its earlier notice, published in two newspapers, in compliance with Sunshine Law, that it would use this method of informing public of these meetings. Fact that meetings were "workshop" rather than regular meetings did not require specific invitation to public to attend in order to constitute requisite statutory notice. *New Carrollton v Rogers* (1980, Md) 410 A2d 1070.

See *Sullivan v Credit River Township* (Minn) 217 NW2d 502, supra § 7(a).

approval of contract with architectural firm, did not violate public meeting statute where notice of meeting was posted at high school, court house, and post office two days before meeting, where notice stated that agenda for meeting could be obtained at office of superintendent, and where agenda included notice of "discussion" with representative of architectural firm and stated that such discussion "should result in determining whether we want this company or not," since notice did inform public that agreement with architect was to be discussed and possibly entered into although language was not model of clarity. *Banks v Board of Education* (1979) 202 Neb 717, 277 NW2d 76.

City complied with agenda requirements of open meeting law where ordinance creating water district was scheduled and noted on agenda at regular session of city council, then delayed for consideration one week, duly scheduled and noted on agenda for later meeting. *First Assembly of God Church v Scottsbluff* (1979) 203 Neb 452, 279 NW2d 126.

Municipality did not violate open-meeting law by failing to give adequate notice to citizens of meeting at which salary increase ordinance raising salaries of city officials was passed, where municipality published notice of its schedule of regular meetings, ordinance had been previously published and posted, and ordinance was printed on agenda of meeting at which it was passed even though its placement on agenda was done at last minute. *Donato v Gibson* (1981) 178 NJ Super 163, 428 A2d 536.

In action challenge validity of "special reasons variance" granted by board of adjustment, plaintiff's argument that deliberations during what board erroneously called "executive session" violated open meeting law failed because public was not barred from meeting room, those who wished to hear moved closer to conference table, and, as required, detailed minutes were kept which were more than adequate and provided a "detailed recount of the deliberations." *Hudanich v Borough Council of Avalon* (1981) 183 NJ Super 244, 443 A2d 777.

With regard to meeting in city council chamber, wherein overflow crowd in attendance required that some members of public be excluded from chambers, petitioners contended that language in public meetings statute requiring that "... all persons so desiring shall be permitted to attend and listen ..." had been violated irrespective of size of crowd and limitations of meeting hall, inasmuch as all members of public had not been allowed in chambers or within presence of council members; however, court held that phrase to "attend and listen" was better interpreted to require that

excluded or arbitrarily refused admittance, and that meeting could not be "closed" to public; therefore, meeting in city council chamber was deemed to have met requirements of public meeting statute inasmuch as meeting was held in hall designed to accommodate large number of spectators in which, when number of spectators exceeded capacity of hall, efforts were made to allow those who could not gain entrance to listen to proceedings by other means, i.e. out-speaker and radio broadcast. *Gutierrez v Albuquerque* (1981) 96 NM 398, 631 P2d 301.

Failure of county executive officer to hold public hearing did not render reapportionment plan invalid where public hearing by county legislature satisfied statutory requirements and where violation of open-meeting law, which had led to invalidation of earlier version of plan, was cured by two subsequent public meetings held by county legislature. *Wells v Erie County Legislature* (1981) 62 Dept 83 App Div 2d 792, 440 NYS2d 146, aff'd 53 NY2d 1030, 442 NYS2d 498, 425 NE2d 886.

Where board of education voted in executive session whether to renew teaching contract and then publicly announced with all board members present that vote was 5-0 in favor of non-renewal, public announcement of vote satisfied requirement of open meeting statute that "vote of each member be publicly cast" since announcement made it clear as to how each board member voted. *Graybill v Oklahoma State Board of Education* (1978, Okla) 585 P2d 1358.

Notice provision of open meetings law required only substantial compliance; therefore, requirement that notice be posted for at least 72 hours prior to day of meeting was substantially complied with where wide segment of public was informed by news media of meeting more than 72 hours before day of meeting, and notices were posted for approximately 15 hours before day of meeting and were posted 34 hours before meeting commenced; requirement that notice state place of proposed meeting was substantially complied with where, although notice stated meeting place was to be "administration building", and school district owned no building known as "administration building", two principals' offices and superintendent's offices were maintained in high school, and district activities were usually conducted in those offices, and any person desiring to attend a meeting would have gone to only building of any significance maintained by school district in town in which meeting was held. *Steizer v Huddleston* (Tex Civ App) 526 SW2d 710.

Reapproval of school superintendent's administrative reorganization proposal, previously

valid. *Spokane Education Assn. v Barnes*, 83 Wash 2d 366, 517 P2d 1362.

In action by owners of properties within city's improvement district attacking assessments against their properties, trial court correctly found that no violation of public meetings law occurred where members of city council, who arrived half an hour before scheduled meeting, informally discussed assessment, but no vote was taken nor collective decision, commitment, or promise was made or reached during informal conversations. *Emery v Rawlins* (1979, Wyo) 596 P2d 675.

§ 7 [38 ALR3d 1086]

[a] View that action is not invalidated

Board of education's failure to read aloud names of teachers who were not being offered contracts did not violate open meeting law where list of teachers being offered contracts, with marks appearing next to names of teachers not being offered contracts, was attached to minutes of meeting available to public and board explained markings on list during meeting. Board technically violated open meeting law when it refused to allow certain persons in attendance to tape record the proceedings, even though state law provided that any public meeting could be recorded, but technical violation having no demonstrated prejudicial effect on complaining party would not nullify all business conducted at public meetings so long as meeting complies with the spirit of the law. *Karol v Board of Education Trustees* (1979) 122 Ariz 95, 593 P2d 619.

See *Wilmington Federation of Teachers v Howell* (1977, Del Super) 371 A2d 832, § 6[e].

Open Meetings Act does not mandate invalidity of public action allegedly taken during closed proceeding, where two county boards of school trustees adjourned to deliberate in private after taking of evidence and then returned to open forum to vote, orders issued by county boards and arising from such meetings were not ipso facto invalid. *Board of Education v County Board of School Trustees* (1978) 60 Ill App 3d 415, 17 Ill Dec 725, 376 NE2d 1054.

Park board's determination to annex land was not invalid, even though park district failed to publish or post public notice of its regular meetings for calendar and fiscal years in which annexation meeting occurred, as required by public meeting statute, since statute did not invalidate official actions taken at proceedings held in manner violative of statute. *Re Byron Park Dist.* (1978) 67 Ill App 3d 61, 24 Ill Dec 300, 385 NE2d 67.

Omission to post notice of meeting on door of meeting place, contrary to requirement of

conducted as all-day public hearing, no secret ballot was taken during closed session, as each member's vote was public record, and deliberative session in question could have been an entirely lawful "executive meeting" under provision of act had formal motion been made. *Olathe Hospital Foundation, Inc. v Extendicare Inc.*, 217 Kan 546, 539 P2d 1.

Town board meeting decision approving site for sanitary landfill was not validated by fact that door of meeting room was unlocked, but where directory rather than mandatory statute impliedly requiring timely notice to public failed to specify requirement that actions taken at nonpublic meetings shall be invalid, and where over \$10,000 had been spent by landowner in reliance on board's approval, board was estopped to rescind its approval. *Sullivan v Credit River Township* (Minn) 217 NW2d 502.

In petition by taxpayer for declaratory judgment asking that ordinance of city increasing salary of its mayor be declared void in that no notice of special meeting of Board of Aldermen was given to general public, as required by Sunshine Law, trial court properly denied relief where, although without question there was violation of Sunshine Law, question of whether ordinance adopted increasing mayor's duties and his salary in absence of open meeting should be declared void was one which had never been decided in courts, and was matter for determination by legislators. *Hawkins v Fayette* (1980, Mo App) 604 S.W.2d 716.

Zoning board's failure to comply with openness of meeting ordinance did not vitiate granting of variance for dog racetrack. *Carter v Nashua* (NH) 308 A2d 847.

Although informal luncheon gathering of board of supervisors, at which staff reports concerning proposed budget were given, constituted meeting within public meeting statute, or in absence of showing of sufficient prejudice or good cause, isolated technical violation did not warrant invalidating entire budget adopted by board. *Kessel v D'Amato* (1979) 97 Misc 2d 675, 412 NYS2d 303, mod (2d Dept) 72 App Div 2d 790, 421 NYS2d 614.

Although property owners' attorney and traffic engineer were barred from meeting between city council and city traffic engineer at which ordinance authorizing taking of property was discussed, voiding of ordinance was not required where property owners' attorney later had opportunity to question engineer in public before council. *Perez v Pawtucket Redevelopment Agency* (RI) 302 A2d 785.

See *Nageotte v Board of Supervisors* (1982) 233 Va 259, 288 SE2d 423, § 6[h].

[b] View that action is voidable

In action by railroads and environmental

of dam replacement locks, court erred not requiring Army Corps of Engineers to hold nonadjudicatory public meeting to discuss implementation of project. When an agency has clearly violated its own public meeting regulations, there should be a presumption in favor of order requiring a meeting. *Izaak Walton League v Marsh* (1981) 210 App DC 233, 655 F2d 346, cert den (US) 70 L Ed 2d 630, 102 S Ct 657.

See *Littleton Education Assn. v Arapahoe County School Dist.* (Colo) 553 P2d 793, supra § 6[d].

See *Bigelow v Howze* (Fla App) 291 So 2d 645, supra § 6[d].

Unannounced gathering of members of university faculty and Public Employee Relations Board held prior to scheduled meeting was in violation of "open meeting law" and adoption of motion at subsequent meeting without further discussion was technical violation which, standing alone, might not have required returning motion to board for discussion again, but such return to board was required where board members failed to acquaint themselves fully with record under facts of case and failed to serve parties with copy of hearing officer's report. *Re University of Kansas Faculty* (1978) 2 Kan App 2d 116, 581 P2d 817.

Comprehensive zoning plan adoption or amendment is invalid without compliance with statutory requirement of public hearing. *Hines v Puchback-Halloran Volkswagen, Inc.* (Ky) 513 SW2d 492.

Disciplinary action taken by hearing board against fireman was voidable as violative of open meeting law where fireman orally requested that meeting be held in public but request was denied, and where closed session was held without giving public notice of general nature of business to be conducted in closed session and reason for secrecy, and without adopting motion for closed session in open, public session. *Reed v Richmond* (1979, Ky App) 582 SW2d 651.

See *Pliginsk v School Committee of Whitman* (1981, Mass App) 414 NE2d 613, § 6[d].

Amendments to zoning laws passed at meeting of zoning board of which public was not properly notified would be invalid in view of Public Board Meetings Act's requirement that public boards give notice of their meetings to provide members of public with opportunity to be present so that they can observe manner in which such boards transact public business. *Haven v Troy*, 39 Mich App 219, 197 NW2d 496.

Special meetings of city council, relating to purchase of land for improvement of sanitary sewage disposal system, were invalid on ground public meeting statute was violated

if notice of meeting was not met by posting notice in three public places at 10 p.m. on day preceding meeting and where deliberations of city council as to whether offer to purchase real estate should be made must take place in open meeting and not in closed executive session. Council properly cured defect in meetings by authorizing purchase of land at subsequent meeting which complied with all statutory requirements. *Pokorny v Schuyler* (1979) 202 Neb 331, 275 NW2d 281.

School board meeting for which no public notice was given was invalid where result of discussion concerning renewal of contract of controversial elementary school teaching principal was decision not to renew contract, which amounted to "dismissal" within meaning of statute requiring open meeting on matter affecting employment status of public employees. *Stoneman v Lamworth School Dist.* (NH) 320 A2d 657 (citing annotation).

See *Pollito v Deane* (1977) 74 NJ 562, 379 A2d 211, § 5.

Notwithstanding provision in public meeting law that actions were not voidable solely for failure to conform with any notice requirement, action of school board in filling board vacancy was void for failure to comply with 48-hour notice requirement of publication in two newspapers, where notice was delivered to two newspapers which would not publish an issue until after school board meeting and third newspaper published notice on same day as meeting. Executive session for purpose of interviewing applicants following adjournment of open meeting was not in violation of public meeting law, notwithstanding that record indicated that interviews did not relate to any particular lot situation that would invade individual privacy of school board applicants, where it was assumed that resumes submitted by applicants were available for review by board members and, thus, question of individual privacy could have arisen. School board did not violate public meeting law by failing to have any public discussion by any board member regarding filling board vacancy, where no evidence existed that any discussions took place in closed session. *Jones v East Windsor Regional Board of Education*, 143 NJ Super 182, 362 A2d 1228.

See *Accardi v North Wildwood*, 145 NJ Super 532, 368 A2d 416 supra § 6[d].

See *Allan-Deane Corp. v Bedminster* (1977) 153 NJ Super 114, 379 A2d 265, § 6[d].

Action of township board in granting variance for erection of restaurant violated open public meeting statute and was void where portion of final meeting, at which variance was granted, was conducted in private session, even though merits of proposed variance were never

discussed and anticipated litigation exception were not applicable. *Caldwell v Lambron* (1978) 161 NJ Super 284, 391 A2d 530.

School board violated open meetings act by failing to give 48 hour notice of meeting to terminate teachers where plans for budget reduction and termination lists were fully prepared prior to city council meeting at which board actions were to be approved, and where board had sufficient resources and knowledge in advance to make provision for meeting in full compliance with statute, without increasing costs or changing program modification plan. Prerequisites for emergency meeting did not exist and compliance notice provision was not excused. *Jenkins v Newark Board of Education* (1979) 166 NJ Super 357, 399 A2d 1034, aff'd 166 NJ Super 300, 399 A2d 1005.

See *White v Battaglia* (1980, 4th Dept) 79 App Div 2d 880, 434 NYS2d 537, § 10.

Closed meetings of rent board which resulted in issuance of rent guideline order for rent stabilized apartments violated public meeting statute since such meetings were neither announced to news media nor open to public; rent guideline order issued by board was invalid and implementation of order would be enjoined. *Rent Stabilization Assn. v Rent Guidelines Board* (1978) 98 Misc 2d 312, 413 NYS2d 950.

See *Sanna v Lindenhurst Bd. of Education* (1981) 107 Misc 2d 267, 433 NYS2d 976, § 6[c].

See *Burgher v Purcell* (1981) 109 Misc 2d 531, 410 NYS2d 480, § 6[c].

Dismissal of plaintiff's action requesting injunction to restrain school district from denying teaching contract and from seeking replacement for position held by teacher was error where, although school board voted not to renew teacher's contract at valid open meeting, all discussions concerning the evaluation of the teacher and reasons for contemplated nonrenewal of contract were conducted at prior invalid executive session, and where school district had clearly attempted to evade requirements of open meetings act by holding discussion at illegal meeting. *Peters v Bowman Public School District No. 1* (ND) 231 NW2d 817.

See *Berry v Board of Governors of Registered Dietitians* (1980, Okla) 611 P2d 628, § 6[b].

Employment contract, which was approved during special board meeting, was invalid where notice given to public was likely to mislead average reader and was willful violation of Open Meeting Act, which nullified action taken. *Howarth Bd. of Education v Havens* (1981, Okla App) 637 P2d 902.

See *Appeal of Emmanuel Baptist Church* (Pa Commonwealth) 361 A2d 536 supra § 5.

of resolution authorizing per capita tax constituted formal action of agency within meaning of Sunshine Law; thus where board did not attempt to give mandatory public notice, since news articles in two local newspapers failed to satisfy requirement, trial court properly held resolution to be invalid in action by landlords personally responsible under resolution for tenants' tax payments. *Bensalem Township School Dist. v Gagliotti Corp.* (1980, Pa Commonwealth) 415 A2d 123.

Teachers' strike was not "emergency," within meaning of Open Public Meetings Act, and action seeking temporary injunction against strike was invalid where authorization for action was passed at school district meeting held in violation of 24-hour notice requirement for nonemergency meetings. *Mead School Dist. v Mead Education Assn. (MEA)* 85 Wash 2d 140, 530 P2d 302.

[c] Effect of subsequent ratification on action otherwise voidable

In action by taxpayers challenging validity of contract made by school district in violation of open meeting laws, in which district responded that violation of open meeting laws was only technical and had no prejudicial effect in that it was cured when school board ratified its actions at later open meeting, contract was void for violation of open meeting laws where there was evidence that school board's decision to hire educational consultant was made during closed meeting, and where evidence that board members intended to pass resolution approving contract at open meeting did not make violation technical. *Aluert v Sunnyside United School Dist.* (1980, App) 126 Ariz 473, 616 P2d 933.

Minority of town council members failed to state cause of action where, although plaintiffs alleged majority of town council had conducted closed meeting that resulted in dismissal of town manager in violation of open meeting law, plaintiffs' complaint also alleged that prior action was subsequently ratified at meeting complying with law. *Valencia v Cota* (1980, App) 126 Ariz 555, 617 P2d 63.

Readoption by livestock board, at public meeting, of plan to dismiss chief inspector cured "open meeting" defect of previous executive session, wherein resolution to dismiss was originally passed. *McLeod v Chilton* (1981, App) 132 Ariz 9, 643 P2d 712, cert den (US) 74 L Ed 2d 141, 103 S Ct 172.

Although sunshine law was technically violated when superintendent-elect and board members met privately on at least two occasions and discussed removal of former director of administration and abolition of his position, subsequent board action at public meeting

rector to elementary school position was not void where board took independent, final action in voting to abolish position by holding public meeting, permitting discussions and taking voice vote. *Tolar v School Bd.* (1981, Fla) 398 So 2d 427.

See *Houman v Pompton Lakes* (1977) 155 NJ Super 129, 382 A2d 413, § 6(a).

Rate increase by river authority at meeting which did not comply with notice provisions of open meeting law insofar as subject of rates was concerned, was invalid, and subsequent ratification, attempted at meeting which properly complied with notice requirements was ineffective where, purported ratification could not be given retrospective operation to increase rates for power sold before meeting giving rise to ratification. *Lower Colorado River Authority v City of San Marcos* (Tex) 523 SW2d 641.

§ 8 [38 ALR3d 1090]

Where City Charter provided "all meetings of . . . all boards . . . shall be open to the public", "Minutes of all such meetings shall be kept and . . . shall constitute public records", and "all public records . . . shall be open to inspection . . .", newspaper reporter, who was citizen of city had standing to enjoin violation of statute and closed meeting of Equal Employment Opportunity Board to consider allegation of employment discrimination, at which no minutes were kept, was held in violation of Charter and if matter was to be pursued, deliberation would have to be held again and Board would have to take minutes and make them available to public. *Abilene v Shackelford* (1979, Tex) 585 SW2d 665.

See *Cameron County Good Gov. League v Ramon* (1981, Tex Civ App 9th Dist) 619 SW2d 224, § 10.

§ 9 [38 ALR3d 1091]

See *Journal Publishing Co. v Enfield* (1974) 31 Conn Supp 392, 373 A2d 193, (citing annotation), § 6(b).

Teacher's union, seeking judicial declaration that public meeting law did not apply to grievance arbitration hearings conducted by union and school board pursuant to agreement, was properly denied preliminary injunction it sought against newspaper representatives, where court noted its belief that private agreements by public bodies could not be used to circumvent public meeting law but based its ruling on trial court's finding of no irreparable injury. *Palm Beach County Classroom Teacher's Assn. v Schol. Bd.* (1982, Fla App D4) 411 So 2d 1375.

See *Jefferson County Board of Education v*

§ 6(c).

See *Brown v East Baton Rouge Parish School Bd.* (1981, La App) 405 So 2d 1148, § 6(c).

Legislature, not court, must determine what acts of school board are not subject to open meeting law, and injunction against closed meetings was improper which detailed 8 undisciplined exceptions, including hearings for discharge, suspension, or termination of employment of tenure teachers if so requested by teachers, meetings involving personnel evaluation of individual employees or consideration of charges against them, meetings for purpose of interviewing prospective employees or administrative or other sensitive positions, meetings with board attorney or attorneys to discuss pending litigation, and meetings of board with its labor negotiators to discuss certain proposals. *Channel 10, Inc. v Independent School Dist.*, 298 Minn 306, 215 NW2d 814.

See *Hudson v School Dist.* (1979, Mo App) 578 SW2d 301, § 6(c).

See *Rent Stabilization Assn. v Rent Guidelines Board* (1978) 98 Misc 2d 312, 413 NYS2d 950, § 7(b).

See *Bensalem Township School Dist. v Gigliotti Corp.* (1980, Pa Cmwlth) 115 A2d 123, § 7(b).

In convening an executive session city council complied with public meeting statute, where motion to so convene tracked language of statute, referred to and quoted language of specific exemption (allowing discussion of "actual or potential litigation"), and identified agenda item to which specific exemption applied; council violated statute by discussing matters beyond scope of exemption but since there was only one violation and court did not infer therefrom that future violations would follow there was no justification for injunction. *Marsh v Richmond Newspapers, Inc.* (1982) 223 Va 245, 288 SE2d 415.

See *Nageotte v Board of Supervisors* (1982) 233 Va 259, 288 SE2d 423, § 6(b).

§ 10 [38 ALR3d 1091]

See *A. G. Becker, Inc. v Board of Governors of Federal Reserve System* (1980, DC Dist Col) 502 F Supp 378, § 6(c).

See *Cooper v Arizona Western College Dist. Governing Board* (1980, App) 125 Ariz 463, 610 P2d 465, § 6(c).

Mayor could not be charged with violating public meeting statute by releasing minutes of city council executive session, where executive session in question did not conform to statutory requirements entitling it to confidentiality. *State v Murphy* (1982, App) 131 Ariz 354, 641 P2d 268.

Legislature

agency and was therefore subject to local agency public meetings statute. Since there were no agenda notice requirements under local agency public meeting statute, local housing authority did not violate statute by failing to give notice of its intent to consider terminating tenant union's lease of housing authority property where meeting apparently ended with attorney-client conference, which was usual practice, but then reconvened for consideration of lease. *Torres v Board of Cours.* (1979, 5th Dist) 89 Cal App 3d 545, 152 Cal Rptr 506.

Under public meeting statute requiring "full and timely notice" of meetings at which public business will be considered, state legislative committee provided fair notice to public where committee chairman directed secretary of senate to publish list of all bills capable of being considered on particular day by committee in senate calendar which was posted outside senate chambers and delivered to members of press in capital pressroom, notwithstanding agenda limited to bills which might be reasonably reached at given meeting was not furnished. *Benson v McCormick* (1978, Colo) 578 P2d 651.

Where board of education held meeting which was not at usual time or place and only notice of meeting given to public was one typewritten announcement posted on bulletin board where meeting was held, trial court properly invalidated action taken by board at meeting, since notice given violated requirements of statute mandating that public entities hold public meetings and give reasonable notice thereof. *White v Battaglia* (1980, 4th Dept) 79 App Div 2d 880, 434 NYS2d 537.

Where town board had been conducting its meetings on second floor of town hall in meeting room which was accessible only by ascending winding staircase, thus rendering meetings inaccessible to many of the physically handicapped, and where town had been aware for several months of statutory mandate that "reasonable efforts be made to insure that meetings are held in facilities that permit barrier-free physical access to the physically handicapped," meetings would be moved to other available barrier-free facilities where there was no showing that such movement would disrupt governmental operations significantly and in spite of fact that town was in process of constructing elevator in town hall. *Fenton v Randolph* (1977) 92 Misc 2d 514, 400 NYS2d 987.

Public meeting statute provision that permitted closed sessions to consider information regarding appointment or employment of officer under jurisdiction of governing or governmental body was not applicable to meeting of board of education which met to select person to fill vacancy on board of education, since member of board of education was not an

investigative committees was not applicable to board of education meeting as "committee of the whole" for purposes of studying and investigating persons nominated to fill vacancy on board. Board of education violated public meeting statute requirement that actions be conducted openly, where board in voting to fill board vacancy used secret ballots. Notwithstanding public meeting statute stated no requirement regarding notice of meetings and no other statute specifically provided for notice of special meetings, education board's giving of one-hour notice by telephone to office of two newspapers regarding special meeting to fill board vacancy was insufficient, since board was required to give reasonable notice in order to effectuate the public meeting statute. *News & Observer Publishing Co. v Interim Board of Education*, 29 NC App 37, 223 SE2d 580.

See *Hilliary v State* (1981, Okla Crim) 630 P2d 791, § 3 [a].

Although public meeting statute was mandatory, and it was undisputed that school district board of trustees did not give notice of any meetings relative to calling of bond issue election, election would not be set aside where there was no showing that any meeting was ever held by trustees for purpose of calling election, and no statute required trustees to call such election. *Hall v Thomas* (Tex Civ App) 474 SW2d 276, error dismd.

Member of board of trustees for school district could not tape record proceedings of board in executive session against wishes of majority of board, despite fact that open meetings law specifically authorized use of tape recorders at public meetings, since no similar provision authorized use of tape recorders at executive sessions of same public body and, therefore, legislature necessarily denied use of such devices in executive sessions. *Zamora v Edgewood Independent School District* (1979, Tex Civ App 9th Dist) 592 SW2d 649, writ rel n r e.

Under Open Meetings Act providing that nothing in statute "shall be construed to require governmental bodies to hold meetings open to the public in cases involving . . . public officer or employee . . . unless such officer or employee requests a public hearing," school board did not violate Act when it moved to enter into executive session before announcing in open session that it had voted to uphold its decision to not renew teacher's contract where teacher failed to object to school board's executive session. *Bowen v Calallen Independent School Dist.* (1980, Tex Civ App 13th Dist) 603 SW2d 229, writ rel n r e.

County commissioners' court violated provisions of Open Meetings Act where court held

notice for matters that were not of urgent public necessity and added matters to agenda after notice was posted; plaintiff good government league had standing as "interested person" to bring action to prevent violations of Act. Cameron County Good Government League v Ramon (1981, Tex Civ App 9th Dist) 619 SW2d 224.

38 ALR3d 1102-1193

§ 1 [38 ALR3d 1109]

[b] Related matters

Stockholder's personal conduct of operations or management of assets as factor justifying disregard of corporate entity. 46 ALR3d 428.

Validity and construction of state statute making successor corporation liable for taxes of predecessor. 65 ALR3d 1184.

Liability of parent corporation for acts of subsidiary. 16 Am Jur Proof of Facts 2d 679.

Auto-Cite®: Any case citation herein can be checked for form, parallel references, later history and annotation references through the Auto-Cite computer research system.

§ 3 [38 ALR3d 1114]

See *International Union, United Auto., etc. v Cardwell Mfg. Co.* (DC Kan) 416 F Supp 1267, *infra* § 22[b].

See *Northern Illinois Gas Co. v Total Energy Leasing Corp.* (1980, ND Ill) 502 F Supp 412, § 21[b].

Although parent corporation may not be held liable for contracts of its subsidiary solely because of stock ownership, corporation may become actor in whole business of subsidiary, since subsidiary corporation over which parent corporation exercises control in everyday operations may be deemed instrumentality or agent of parent, and when this occurs, parent will be legally responsible; determinative factor is whether subsidiary corporation is dummy for parent corporation. Accordingly, lower court erred in dismissing complaint for breach of contract as against parent corporation upon ground that it was neither signatory to the written contract between plaintiff and subsidiary nor named as party to it, where it was clear that practically all of dealings with respect to contract and its performance were had with parent and not with subsidiary, including actual approvals of orders taken, and allegations in complaint, supported by affidavits and documentary evidence, raised question as to whether parent so controlled actions of subsidiary that unitary liability to plaintiff arising from actions of defendants could be imposed on both corporations. *A. W. Fair Co. v Ataka &*

NYS2d 919.
See *Amlac Foods, Inc. v International Systems & Controls Corp.* (1981) 52 Or App 907, 630 P2d 868, § 22[a].

§ 4 [38 ALR3d 1116]

See *Japan Petroleum Co. (Nigeria, Ltd.) v Ashland Oil Co.* (1978, DC Del) 456 F Supp 831, § 22[b].

See *Elvalsons v Industrial Covers, Inc.*, 269 Or 441, 525 P2d 105, *infra* § 22[c] (citing annotation).

See *Hanson Southwest Corp. v Dal-Mac Construction Co.* (1977, Tex Civ App) 554 SW2d 712, § 15.

See *Soderberg Advertising, Inc. v Kent-Moore Corp.*, 11 Wash App 721, 524 P2d 1355, *infra* § 22[c].

§ 5 [38 ALR3d 1119]

Also recognizing that parent corporation may be held liable for contractual obligations of its subsidiary under alter ego theory:

US—*International Union, United Auto., etc. v Cardwell Mfg. Co.* (DC Kan) 416 F Supp 1267; *Coastal States Trading, Inc. v Zenith Navigation S.A.* (1977, DC NY) 446 F Supp 330.

Cal—*Roman Catholic Archbishop of San Francisco v Superior Court of County of Alameda*, 15 Cal App 3d 405, 93 Cal Rptr 338.

Ky—*American Collectors Exchange, Inc. v Kentucky State Democratic Cent., Executive Committee* (1978, Ky App) 566 SW2d 759.

Complaint by oil broker against oil producer subsidiary and grandparent oil corporation was sufficient to state cause of action against grandparent oil corporation, where complaint alleged, *inter alia*, that subsidiary was grandparent's alter ego in that subsidiary fraudulently claimed act of state upon grandparent's orders in order to avoid performance of contract. *Leeward Petroleum, Ltd. v Mene Grande Oil Co.* (DC Del) 415 F Supp 158.

See *Hanson Southwest Corp. v Dal-Mac Construction Co.* (1977, Tex Civ App) 554 SW2d 712, § 15.

§ 6 [38 ALR3d 1120]

See *Soderberg Advertising, Inc. v Kent-Moore Corp.*, 11 Wash App 721, 524 P2d 1355, *infra* § 22[c].

§ 8 [38 ALR3d 1121]

See *Japan Petroleum Co. (Nigeria, Ltd.) v Ashland Oil Co.* (1978, DC Del) 456 F Supp 831, § 22[b].

Leasing Corp. (Nigeria, Ltd.) v Ashland Oil Co. (1978, DC Del) 456 F Supp 831, § 21[b].

§ 9 [38 ALR3d 1122]

Parent corporation was not liable on theory of unjust enrichment for subsidiary's overcharging through its false certification that it was billing lowest available net rates at time it was receiving rebates, notwithstanding that parent corporation sold stock of subsidiary subsequent to time that overcharges occurred, since alleged increase in value allegedly reflected in sale price of stock due to overcharges was exactly offset by legal obligation to repay those charges and subsidiary was not liquidated. *United States v Dean Van Lines, Inc.* (CA5 Fla) 531 F2d 289.

§ 10 [38 ALR3d 1123]

Also recognizing that stock ownership alone ordinarily does not render parent corporation liable for debts or contracts of subsidiary:

US—*Trans-Amazonica Iquitos, S. A. v Georgia S.S. Co.* (DC Ga) 335 F Supp 935.

Mass—*Manufacturing Improv. Corp. v Georgia Pacific Corp.* (Mass) 286 NE2d 339.

NY—*Musman v Modern Deb, Inc.* (App Div) 377 NYS2d 17.

Or—*Amlac Foods, Inc. v International Systems & Control Corp.* (1981) 52 Or App 907, 630 P2d 868.

See *A. W. Fair Co. v Ataka & Co.* (1979, 1st Dep) 71 App Div 2d 370, 422 NYS2d 419, § 3.

§ 11 [38 ALR3d 1127]

Also recognizing that use of common officers, including directors, by parent and subsidiary corporations, does not of itself render parent liable for subsidiary's contracts or debts:

NY—*Musman v Modern Deb, Inc.* (App Div) 377 NYS2d 17, *infra* § 22[a].

See *Bernardin, Inc. v Midland Oil Corp.* (CA7 Ind) 520 F2d 771 (citing annotation).

Where subsidiary corporations maintained separate bank accounts, were separately listed in telephone book, were not grossly undercapitalized, substantially complied with formal requisites of corporate existence, and were not controlled to impermissible degree by parent, trial court could not disregard their separate corporate identities in action on contract of one of subsidiaries in spite of fact that parent corporation owned 100 per cent of subsidiaries' stock and all three corporations had some common directors and employees. *Bendix Home Systems, Inc. v Hurston Enterprises, Inc.* (1978, CA5 Fla) 566 F2d 1039.

See International Union, United Auto., etc. v Cardwell Mfg. Co. (DC Kan) 416 F Supp 1267, *infra* § 22[b].

See *Farkar Co. v R. A. Hanson Disc., Ltd.* (1977, DC NY) 441 F Supp 841, *mod* on other gnds (CA2 NY) 583 F2d 68, *on reh* (CA2 NY) 604 F2d 1, 26 UCCRS 1104, § 22[c].

See *Japan Petroleum Co. (Nigeria, Ltd.) v Ashland Oil Co.* (1978, DC Del) 456 F Supp 831, § 22[b].

See *Northern Illinois Gas Co. v Total Energy Leasing Corp.* (1980, ND Ill) 502 F Supp 412, § 21[b].

§ 12 [38 ALR3d 1129]

[a] Recovery affected

See *Chengelis v Cenco Instruments Corp.* (DC Pa) 386 F Supp 862, *aff'd* without op (CA3 Pa) 523 F2d 1050, *infra* § 15.

See *Farkar Co. v R. A. Hanson Disc., Ltd.* (1977, DC NY) 441 F Supp 841, *mod* on other gnds (CA2 NY) 583 F2d 68, *on reh* (CA2 NY) 604 F2d 1, 26 UCCRS 1104, § 22[c].

[b] Recovery not affected

In suit to recover for value of magnetic tapes sold to both parent and subsidiary marketing organization, parent was liable for sales to subsidiary, despite fact that plaintiff was aware of corporate relationship, where two out of three directors of subsidiary were officers of parent; parent owned fifty-one per cent of stock of subsidiary; when plaintiff refused to grant corporate credit to subsidiary, parent agreed to inventory \$20,000 worth of tapes for benefit of subsidiary; parent advanced monies to subsidiary for its commission sales account; parent received merchandise from plaintiff, along with monthly statements and invoices; and parent did all shipping and billing to customers. *Anpex Corp. v Office Electronics, Inc.*, 24 Ill App 3d 21, 320 NE2d 486.

§ 15 [38 ALR3d 1134]

See *Bendix Home Systems, Inc. v Hurston Enterprises, Inc.* (1978, CA5 Fla) 566 F2d 1039, § 11.

See *Garrow v Soo Line R. Co.* (DC Wis) 361 F Supp 764, *infra* § 18 (citing annotation).

Defendant parent corporation was not liable under plaintiffs' contract with defendant's wholly owned subsidiary absent proof that corporate form of subsidiary was used by defendant to perpetrate fraud or promote injustice akin to fraud, and where evidence showed that plaintiffs executed contract which bound only subsidiary and not defendant notwithstanding plaintiffs' knowledge of interrelation of two. *Chengelis v Cenco Instruments Corp.* (DC Pa)

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Ark -----	§§ 2, 4, 5, 6[b, d]	NH -----	§§ 5, 6[c], 9
Cal -----	§§ 2, 5, 6[a, b, d, e], 7[a], 8, 9	NJ -----	§§ 5, 6[a, d], 7[b, c]
Fla -----	§§ 2-5, 6[a, b, c], 8-10	NM -----	§§ 3[a, b], 5
Ind -----	§ 6[d]	Ohio -----	§§ 5, 6[a, f]
Iowa -----	§§ 5, 7[a], 10	Pa -----	§§ 5, 7[b]
Mass -----	§ 7[a]		

§ 1. Prefatory matters

[a] Scope

This annotation collects and analyzes the cases which have discussed the validity, construction, and application of those statutes which provide, in effect, that meetings of public entities are to be open to the public.¹

Notwithstanding that a particular state's statute may be popularly or commonly known as the "Freedom of Information Act," or the "Sunshine Law" or the "Right to Know Law" such statutes will generally be referred to in the annotation as "public meeting" statutes.

This annotation does not purport to state the statutory law of any jurisdiction and statutory provisions are dealt with only to the extent that such enactments have been construed in reported decisions which are treated herein. The reader is advised always to consult the most recent statutes of his jurisdiction.

[b] Related matters

Right to cross-examination of witnesses in hearings before administrative zoning authorities. 27 ALR3d 1304.

¹ The annotation is limited to statutes of general applicability—that is, statutes that require that meetings of all public bodies, commissions, and the like be open to the

Validity and construction of statutory notice requirements prerequisite to adoption or amendment of zoning ordinance or regulation. 96 ALR2d 449.

Right to hearing before revocation or suspension of liquor license. 35 ALR2d 1067.

Constitutional rights of owner as against destruction of building by public authorities. 14 ALR2d 73.

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Open meeting statutes: the press fights for the "right to know." 75 Harv L Rev 1199.

§ 2. Summary

A number of states have enacted "public meeting" statutes which generally provide that meetings of public entities within the state are to be open to the public at large. Observing that tendencies toward secrecy in public affairs have been the subject of extensive criticism and that terms such as "managed news," "secret meetings," "closed records," "executive sessions," and "study sessions" have become synonymous with "hanky-panky" in the minds

public, as contrasted to statutes requiring that a particular body, agency, commission, or the like hold meetings open to the public.

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of public-spirited citizens, one court has commented that one purpose of a "public meeting" statute is to maintain the faith of the public in governmental agencies, inasmuch as the right of the public to be present and to be heard during all phases of enactments by public entities is a source of strength in the country.²

The validity of such statutes has been upheld as against contentions that they are violative of constitutional "due process" provisions³ or other constitutional provisions.⁴ Such statutes having been enacted for the public benefit, it has been said that they should be liberally construed.⁵ In so construing the statutes, the courts have found a considerable number of public entities to be within the purview of the statutes, but a few have been found to be beyond their pale.⁶

Assuming a public entity to be one covered by a "public meeting" statute, questions have occasionally arisen as to what assemblages of that entity are within the purview of the statute. It

would appear that generally speaking not only are formal sessions of such an entity intended to be covered by the statute but also those gatherings of the members at which they might deal with matters on which foreseeable action could be taken.⁷ Particular gatherings have accordingly been found both required and not re-

quired to be open to the public.⁸ An interesting situation has arisen in regard to conferences between a public entity and its counsel, the courts apparently reacting differently as to the necessity of grafting an "attorney-client" privilege onto a "public meeting" statute.⁹

Lastly, such statutes having been enacted for the public good, the question arises as to what is the status of official action taken in violation of them. Some courts have taken the view that such action is not invalidated,¹⁰ although there is contrary authority¹¹ which further holds that a perfunctory ratification of that action at a later public meeting will not cure the original defective meeting and validate the action.¹²

2. *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693. •

3. § 3[a], *infra*.

4. § 3[b], *infra*.

5. § 4, *infra*.

6. § 5, *infra*.

7. § 6[a], *infra*.

8. § 6[d, e], *infra*.

9. § 6[b], *infra*.

Thus, for example, it is pointed out in *Laman v McCord* (1968) 245 Ark 401, 452 SW2d 753, that a city attorney, with the assistance of the mayor, department heads, and other municipal employees, could certainly prepare a case for trial without discussing his plans in detail with the city council.

However, in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, it is stated that settlement and avoidance of litigation are particularly sensi-

[38 ALR3d]-68

tive activities whose conduct would be grossly confounded, and often made impossible, by indiscriminating insistence on open lawyer-client conferences when a public entity is involved. In settlement advice, the attorney's professional task is to provide his client a frank appraisal of strength and weakness, gains and risks, and hopes and fears, the court went on. If the public's "right to know" compelled admission of an audience, the ringside seats would be occupied by the government's adversary, delighted to capitalize on every revelation of weakness, the court added, stating that a lawyer worth his salt would feel a sense of treachery in disclosing that kind of appraisal. The attorney would prefer to fight the lawsuit to its bitter end, and frustration would blunt the law's policy in favor of settlement, and financial imprudence might be a compelled path, the court concluded.

10. § 7[a], *infra*.

11. § 7[b], *infra*.

12. § 7[c], *infra*.

§ 3. Validity of statute

[a] Under constitutional "due process" provision

In the following cases, the validity of a "public meeting" statute was upheld as against a public entity's contention that such a statute was unconstitutional as not affording due process of law to the entity.

Florida's "public meeting" statute, the Sunshine Law, providing that "[a]ll meetings of any board or commission of any state agency or authority or of any agency or authority of any county, municipal corporation or any political subdivision, except as otherwise provided in the constitution, at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, regulation or formal action shall be considered binding except as taken or made at such meeting" was held to be constitutional in Board of Public Instruction v Doran (1969, Fla) 224 So 2d 693, as against the argument of a board of public instruction that the statute was so vague and ambiguous that it did not afford procedural due process of law to the board. Noting that in an earlier case it had held that the words "all meetings" as contained in a statute requiring all meetings of any city or town council to be held open to the public, meant such formal assemblages of a council sitting as a joint deliberative body as were required or authorized by law to be held for the transaction of official municipal business, the court observed that under the earlier decision it would have been unnecessary to include a provision in the "public meeting" statute declaring certain meetings as "public meetings" if the intent of the legislature had been to include only formal assemblages for the transaction of official business. The obvious intent was to cover any gathering of the members where they would deal

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with some matter on which foreseeable action would be taken by the board, the court concluded.

The court in Board of Public Instruction v Doran (Fla) supra, further held the "public meeting" statute constitutional, notwithstanding the board's argument that adequate standards were not included in the provisions of the statute. Pointing out that in order to satisfy the constitutional requirement of due process a statute must be sufficiently explicit in its descriptions of the acts, conduct, or conditions required or forbidden, prescribe the elements of the offense with reasonable certainty, and make known to those to whom it applies what conduct on their part will render them liable for its penalties, the court found that the "public meeting" statute complied with the constitutional requirements of organic due process.

And an unsuccessful contention was made in Raton Public Service Co. v Hobbes (1966) 76 NM 535, 417 P2d 32, that the "public meeting" statute was unconstitutional and void because it was so indefinite, vague, and uncertain, both as to the meetings covered by it and its application, as to deny due process of law. While appreciating that the statute was lacking in some detail and particularity, the court was unable to say that it was fatally defective for that reason.

[b] Under other constitutional provisions

In the following cases, the validity of a "public meeting" statute was upheld as against a public entity's contention that the statute was violative of one or another constitutional provision other than one relating to "due process."

The state constitutional provision prohibiting the passage of an act embracing more than one subject was held not to be violated by the state's "public meet-

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ing" statute, in *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693. Pointing out that the term "subject of an act" as used in the constitution meant the matter which formed the groundwork of the act, and that it might be as broad as the legislature chose as long as the matters included in the act had a natural or logical connection, the court stated that the fact that a statute embracing the matter of open meetings for certain boards and commissions also contained provisions for criminal penalties and for an injunction by application of citizens to restrain violations, did not make the statute unconstitutional.

The operator of an electric utility system, in an unsuccessful attack on the constitutionality of a "public meeting" statute, claimed deficiencies in the title of the statute, in *Raton Public Service Co. v Hobbes* (1966) 76 NM 335, 417 P2d 32. The statute was purported to be "An Act Relating to Public Meetings of All Governing Bodies of the State Which are Supported by Public Funds," and the utility, while conceding that it was a board or commission of the city, contended that it certainly was not a governing body of the state. The argument was made that the "public meeting" statute was unconstitutional insofar as "governing bodies of local subdivisions" were concerned, since the title failed to include them as was required by the state constitution. The court found no difficulty in concluding that governing bodies of local subdivisions were reasonably included within the term "all governing bodies of the state," if that term were construed to mean "governing bodies within the state" rather than "state governing bodies." Deciding that government bodies of local subdivisions within the state were governing bodies of the state in the broadest sense, the court found that the title was not so improper or misleading as to require a holding of unconstitutionality.

§ 2. Rules of construction, generally

In the following cases, the courts took the view that a "public meeting" statute, having been enacted for the public benefit, should be liberally construed notwithstanding the presence of penal provisions in the statute.

The state "public meeting" statute, the Freedom of Information Act, was passed wholly in the public interest and was to be liberally interpreted so that its praiseworthy purposes might be achieved, held the court in *Laman v McCord* (1968) 245 Ark 401, 432 SW 2d 753, rejecting a city's argument that the statute was of a penal nature requiring its strict construction. Although the statute provided that its wilful violation was a misdemeanor punishable by a fine or a jail sentence, the court pointed out that such a provision did not necessarily make the entire statute penal. Noting that whether a statute was to be construed narrowly or broadly depended upon the interests with which the statute dealt, and that generally statutes enacted for the public benefit were to be interpreted most favorably to the public, the court said that the legislature had clearly declared the state's public policy in the "public meeting" statute by providing that "[i]t is vital in a democratic society that public business be performed in an open and public manner."

To similar effect is *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693, where the court observed that statutes enacted for the public benefit should be interpreted most favorably to the public, and that the fact that a statute contained a penal provision did not make the entire statute penal requiring its strict construction.

§ 3. Applicability of statute to particular entities

In the following cases, the courts found the particular entities mentioned

to be among those public entities intended to be covered by a "public meeting" statute.

See *Laman v McCord* (1968) 245 Ark 401, 432 SW2d 753, a case decided under a "public meeting" statute generally providing that "all meetings . . . of governing bodies of all municipalities [and other public bodies] . . . shall be public meetings," in which the court stated that a city council was unquestionably the governing body of a municipality.

Observing that the "public meeting" statute provided that "[a]ll meetings of the legislative body of a local agency shall be open and public," the court in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, stated that, as the legislative body of a local agency, a county board of supervisors was subject to the statute.

Affirming a judgment enjoining the holding of meetings of a city council other than in public, the court in *Miami Beach v Beron* (1970, Fla App) 231 So 2d 847, was of the opinion that boards constituting the governing bodies of municipal corporations were within the scope of the state's "public meeting" statute providing that "[a]ll meetings of any . . . municipal corporation are declared to be public meetings open to the public at all times . . ."

And in *Dobrovolny v Reinhardt* (1970, Iowa) 173 NW2d 837, a county board of education was held to be a public agency clearly within the state's "public meeting" statute requiring meetings of such agencies to be open to the public at all times.

A board of adjustment was a public body within the intent of the Right to Know Law, the state's "public meeting" statute, requiring that "[t]he public shall be admitted to any meeting of a public body at which official action is taken," held the court in *Wolf v Zoning*

Board of Adjustment (1963) 79 NJ Super 546, 192 A2d 305. Pointing out that the statute defined a public body as "a commission, authority, board, council, committee and every other group of 2 or more persons organized under the law . . . to perform a public governmental function by official action," the court found it too clear for extended debate that the statutory board of adjustment was such a body.

A corporation which operated a city's electric utility system, the property of which was owned by the city, was held in *Raton Public Service Co. v Hobbes* (1966) 76 NM 535, 417 P2d 32, to be subject to the provisions of a "public meeting" statute providing that "[t]he governing bodies of all municipalities, boards of county commissioners, board of public instruction and all other governmental boards and commissions of the state or its subdivisions, supported by public funds, shall make all final decisions at meetings open to the public." Rejecting the corporation's contention that legislative powers or governmental functions being absent, there was no reason for requiring meetings of its board of directors to be public, the court stated it would direct attention to other cases wherein the technical form had not been considered controlling, and where corporate instrumentalities for accomplishing public ends, whether governmental or proprietary, had been considered to be governmental agencies.

Of interest is *Beacon Journal Publishing Co. v Akron* (1965) 3 Ohio St 2d 191, 32 Ohio Ops 2d 183, 209 NE2d 399, involving an action by a publishing company for a declaratory judgment as to what publicly formed bodies, commissions, groups, boards and the like of the City of Akron, a charter city, were covered by a statute providing that "[a]ll meetings of any board or commission of any state agency or authority . . . are declared to be public meet-

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ings open to the public at all times," in which the court enumerated several of the public entities which were covered. The assessment equalization board, created by an act of the legislature, was subject to the "public meeting" statute in the conduct of its meetings, the court commented. As to those boards and commissions, established by the city charter, the members of which were appointed by the mayor, sometimes with and sometimes without the advice and consent of the city council, it was said to be necessary to look at the provisions of the charter with regard to each board to determine whether it was subject to the statute. Thus, the sinking fund commission, the board of trustees of the public library, and the members of the board of directors of the municipal university, were found to be subject to the "public meeting" statute.

And in an equity action by property owners and taxpayers against the Allentown Housing Authority, the court in *Bogert v Allentown Housing Authority* (1967) 426 Pa 151, 231 A2d 147, was of the opinion that the state's "public meeting" statute, the Right to Know Law, providing that "[e]very public meeting of a board shall be open to the public," was applicable to the authority.

Notwithstanding the argument of the members of a municipal finance committee, which consisted of 5 of the 15 members of the city council, that the "public meeting" statute did not apply to subordinate committees of governing bodies whose functions were merely to make recommendations to the parent body, the court in *Selkove v Bean* (1968) 109 NH 247 249 A2d 35, 38 ALR3d 1066, held that the finance committee, the meetings of which the plaintiff news reporter sought to attend, was an agency of the municipal corporation, so that its meetings were included in the term "public proceedings" as defined by the statute.

In the following cases, the courts found the particular entities mentioned not be within the purview of a "public meeting" statute.

Referring to a "public meeting" statute providing that "[a]ll meetings of the legislative body of a local agency shall be open and public," and defining "legislative body" as including "the governing board, commission, directors or body of a local agency or any board or commission thereof," the court in *Adler v City Council of Culver City* (1960) 184 Cal App 2d 763, 7 Cal Rptr 805, held that the phrase "or any board or commission thereof," fairly construed, meant any board or commission of the governing body and not a subordinate agency such as a zoning commission created by city charter, acting independently of the governing body and pursuant to authority flowing directly from the charter.

And in *Beacon Journal Publishing Co. v Akron* (1965) , Ohio St 2d 191, 32 Ohio Ops 2d 183, 209 NE2d 399, supra, the court mentioned some of the bodies in the city of Akron, a charter city, which were not covered by that state's "public meeting" statute. Thus, the court observed that boards and commissions created by executive order of the mayor and chief administrator were not subject to the statute. As to the civil service commission established by the city charter, the court, having examined the provisions of the charter to determine whether the commission was subject to the "public meeting" statute, concluded that it was not.

§ 6. Application of statute to particular kinds of gatherings

[a] Generally

In a number of cases within the scope of the annotation, courts have been called upon to determine what kinds of gatherings of a public entity are intended to be within the purview of a "public meeting" statute, and it would

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appear from a reading of the cases that more than the purely formal sessions of a public entity may usually be required by mandate of the statute to be open to the public. See, for example, in addition to cases collected in §§ 6[b-e], infra, the following illustrative holdings and statements.

Thus, while there is language in a California case decided in the Second District of the District Court of Appeal that that state's "public meeting" statute was applicable only to formal meetings of the public entities covered,¹³ a more recent case decided in the California Third District is to the effect that the statute, as amended following the earlier decision, extends its coverage to less formal assemblages.

Thus, in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, the court stated that, construed in the light of the state's "public meeting" statute, the term "meeting" extended to informal sessions or conferences of the county board of supervisors designed for the discussion of public business. The defendant board and its members contended that the trial court erred in reaching substantially the same finding, reliance being placed upon *Adler v City Council of Culver City* (1960) 184 Cal App 2d 763, 7 Cal Rptr 805, supra, which held the statute applicable only to formal meetings for the transaction of official business, while the

13. In *Adler v City Council of Culver City* (1960) 184 Cal App 2d 763, 7 Cal Rptr 805, the court held that the language of the "public meeting" statute providing that "[a]ll meetings of the legislative body of a local agency shall be open and public," was not directed at anything less than a formal meeting of a city council or one of its subordinate agencies, for if it were, no practical line could be drawn. Citing the example of a local planning commission responsible to a city council, the court observed that the members of the commission and the council (whether the full number or

plaintiff guild argued that the 1961 amendments to the statute were designed to nullify the Adler decision. Observing that instead of appraising the accuracy of Adler as an interpretation of the pre-1961 law and analyzing the 1961 amendments so far as they bore upon Adler, the court preferred to interpret the provision for public meetings by examining the current statute of which it formed a part. Finding nothing in the "public meeting" statute to demarcate a narrower application than the range of governmental functions performed by an agency, the court particularly noted the declaration of intent in the statute was that deliberation as well as action occur openly and publicly. Deliberation thus connoted not only collective discussion, but also the collective acquisition and exchange of facts preliminary to the ultimate decision, the court went on. Finding other extrinsic as well as intrinsic evidence of legislative intention impelling rejection of a narrow interpretation, the court observed that an informal conference or caucus permitted crystallization of secret decisions to a point just short of ceremonial acceptance. There was rarely any purpose to a nonpublic premeeting conference except to conduct some part of the decision process behind closed doors, the court continued, adding that only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, could an

only a few) would be impeded in conducting informal discussions among themselves, thus exchanging information, could be handicapped in viewing property upon which they were about to legislate, would be unable to confer with real-estate experts or with their planning director or with informed individuals having special qualifications to speak upon municipal problems. Thus, the court found that the "public meeting" statute contemplated and did not forbid such informal development of facts pertinent to zoning problems.

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open meeting regulation frustrate such evasive devices. The court concluded that as operative criteria, formality and informality were alien to the law's design, exposing it to the very evasions it was designed to prevent.

Referring to a "public meeting" statute providing in effect that "[a]ll meetings . . . at which official acts are to be taken are declared to be public meetings open to the public at all times," the court in Board of Public Instruction v Doran (1969, Fla) 224 So 2d 693, pointed out by virtue of its decision in an earlier case involving a similar but much more limited statute, that it would have been unnecessary to include a provision in the "public meeting" statute declaring certain meetings as "public meetings" if the legislature had intended to include only formal assemblages for the transaction of official business: the obvious legislative intent was to cover any gathering of the members where they would deal with some matter on which foreseeable action would be taken by the board, the court concluded.

With the narrow exception where public consultation by a public body with its attorney regarding pending or impending litigation would force him to violate the canons of ethics as promulgated by the state supreme court, the court in Times Publishing Co. v Williams (1969, Fla App) 222 So 2d 470, held that the provisions of the state's "public meeting" statute were applicable to every assemblage of a board or commission governed by the statute at which any discussion, deliberation, decision, or formal action was to be had, made, or taken relating to, or within the scope of the official duties or affairs of, such body. Every (thought) as well as every affirmative act, of a public official as it related to and was within the scope of his official duties was a matter of public concern, the court commented, and it was the entire "decisionmaking" process

that the legislature intended to affect. Pointing out that every step in the decisionmaking process, including the decision itself, was a necessary preliminary to formal action, the court stated that it followed that each such step constituted an "official act," an indispensable requisite to "formal action," within the meaning of the statute.

Citing the state's "public meeting" statute, the court in Schultz v Board of Education (1964) 86 NJ Super 29, 205 A2d 762, aff'd 45 NJ 2, 210 A2d 762, stated that it knew of no prohibition against members of a public body holding a closed conference where no official action would be taken; what was prohibited, the court observed, was the taking of official action at other than a public meeting.

In Beacon Journal Publishing Co. v Akron (1963) 3 Ohio St 2d 191, 32 Ohio Ops 2d 183, 209 NE2d 399, the court had before it an action by a publishing company for a declaratory judgment as to what functions and activities of commissions, bodies, committees, bureaus, groups, boards and the like of the city of Akron, a charter city, were covered by a "public meeting" statute providing that "[a]ll meetings of any board or commission of any state agency or authority . . . are declared to be public meetings open to the public at all times." A second sentence of the statute provided that "[n]o resolution, rule, regulation or formal action of any kind shall be adopted at any executive session of any such board, commission, agency or authority." This second sentence limited the first sentence, the court observed, adding that the legislature intended that those meetings which were required to be open to the public were those where any resolution, rule, regulation, or formal action of any kind should be adopted or passed. This meant, the court concluded, that any session of a board or commission subject



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to the "public meeting" statute, where any action was taken, which action was required by law, rule, or regulation to be recorded in the minutes, the journal, or any other official record of the board or commission, had to be open to the public.

[b] Specific kinds of discussions contended to be exception; attorney-client conferences

While a "public meeting" statute may of course contain an exception that meetings between a public entity and its counsel concerning pending or impending litigation need not be open to the public, the problem has on occasion arisen as to the general applicability of a "public meeting" statute to such a meeting in the absence of an exception. Thus, in the following case the court was of the opinion that such meetings were required by the "public meeting" statute to be open to the public, the court finding no shelter for the public entity in the attorney-client privilege.

A city council meeting in closed session with the city attorney to discuss a proceeding to which the city was a party, having been found violative of the state "public meeting" statute providing that "[e]xcept as otherwise specifically provided by law," all meetings of public entities were to be public meetings, the city council unsuccessfully contended in *Laman v McCord* (1968) 245 Ark 401, 432 SW2d 753, that the statute should not be construed to apply to a meeting between it and the attorney. The statute itself effectively refuted the council's contention inasmuch as the legislative mandate that "[e]xcept as otherwise specifically provided by law," all meetings of public entities were to be public meetings, could not be misunderstood, the court commented. While the general attorney-client privilege had been statutorily codified, the court observed that to say that such a statute, dealing

only with a testimonial disqualification, "specifically" provided that the city council might consult its attorney in secret would simply amount to striking the word "specifically" from the "public meeting" statute.

Similarly, in the following case the court took the position that such meetings were generally required to be open to the public, the attorney-client privilege available to a public entity having been waived by the public in enacting the "public meeting" statute, although an exception was found where the attorney might be forced to violate the canons of ethics.

Having held that the provisions of the "public meeting" statute were applicable to every assemblage of a board or commission governed by the statute at which any discussion, deliberation, decision, or formal action was to be had, made, or taken relating to, or within the scope of, the official duties or affairs of such body, the court in *Times Publishing Co. v Williams* (1969, Fla App) 222 So 2d 470, answered its query as to whether there were any exceptions to the mandate of the statute by finding there was a narrow exception where public consultation by a public body with its attorney regarding pending or impending litigation would force him to violate the canons of ethics as promulgated by the state supreme court. Notwithstanding that there was no provision for exceptions on the face of the "public meeting" statute, the defendant school board contended that it might meet privately behind closed doors to go into secret consultation with its attorneys on all legal matters. The court observed that the clear import of the "all meetings" provision of the statute was that the public, acting through the legislature, had waived the attorney-client privilege with regard to the enumerated public bodies. However, there arose from an attorney's duties in the

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conduct of pending or impending litigation certain obligations which bound him, the court continued, noting that his professional conduct in such matters was governed by the canon of ethics as set up by the state supreme court. The legislature was therefore without any authority to directly or indirectly interfere with or impair an attorney in the exercise of his ethical duties as an attorney and officer of the court, it was pointed out. The court emphasized, however, that since the public had waived any privilege of confidentiality it might have had by virtue of such relationship, the "public meeting" statute did not permit private consultation between its agency and the attorney in any other circumstance.

However, the court in the following case was of the view that the "public meeting" statute did not abrogate a public entity's right to private consultation with its counsel on proper occasions, it being found that the attorney-client privilege might operate concurrently with the "public meeting" statute.

Notwithstanding language of the "public meeting" statute that "[a]ll meetings of the legislative body of a local agency shall be open and public," the statutory opportunity of boards of supervisors to confer privately with their attorney on occasions properly requiring confidentiality was not abolished by the statute, stated the court in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480. Viewed as a statutory microcosm, its demand was forthright, offering no internal interstices for private lawyer-client consultations, the court observed. It was not a microcosm, however, but one element in a structure of constitutional and statutory policies covering the powers, duties, and procedures of local government, the court went on, noting that another part of this structure

was the privilege attaching to confidential lawyer-client communications. The plaintiffs, seeking to enjoin nonpublic meetings of the board, did not dispute the availability of the privilege to public officials and their attorneys, but they viewed it as a barrier to testimonial compulsion, not as a procedural rule for the conduct of public affairs. Finding such a view too narrow, the court stated that the privilege was essentially a means of achieving the policy objective of enhancing the value placed by society upon legal representation by assuring the client full disclosure to the attorney unfettered by fear that others would be informed. If client and counsel were to confer in public view and hearing, both privilege and policy were stripped of value, the court noted. The question then was whether the "public meeting" statute abrogated by implication the policy assuring opportunity for private legal consultation by public agency clients, the court observed. Finding evidence of such intent to be too thin, the court pointed out that in requiring board members to deliberate and act in public, the "public meeting" statute did not inexorably embrace the board members in their roles as clients calling upon their attorney for legal advice, and in declaring the public's right to be informed, it did not necessarily propel the public's legal adversary into "the lawyer-client conference clad in the robes of good citizenship." Neither the "public meeting" statute nor its history supplied undebatable evidence of a legislative intent to supersede the assurance of private legal consultation stemming from the statutory privilege, the court found, adding that the two enactments were capable of concurrent operation if the privilege was not overblown beyond its true dimensions. Public board members, sworn to uphold the law, might not arbitrarily or unnecessarily inflate confidentiality for the pur-

pose of deflating the "public meeting" statute, the court continued, and neither the attorney's presence nor the happenstance of some kind of lawsuit might serve as the pretext for secret consultations whose revelation would not injure the public interest. To attempt a generalization embracing the occasions for genuine confidentiality would be rash, the court concluded, adding that the privilege might operate concurrently with the "public meeting" statute, neither superseding the other by implication.

[c] — Discussions relative to personnel

While a "public meeting" statute may of course contain an exception that meetings concerning the handling of a public entity's personnel matters need not be open to the public but may be conducted behind closed doors, the court in the following case refused to read such an exception into its state statute.

Having held that the state's "public meeting" statute was applicable to every assemblage of a board or commission governed by the statute at which any discussion, deliberation, decision, or formal action was to be had, made, or taken relating to, or within the scope of, or the official duties or affairs of, such body, the court in *Times Publishing Co. v Williams* (1969, Fla App) 222 So 2d 470, questioned as to whether there were any exceptions to the mandate of the statute. Notwithstanding that there was no provision for exceptions on the face of the statute, the defendant school board argued that it might meet privately behind closed doors to discuss matters relating to school personnel. In response to the board's contention that innocent school personnel might be harmed if hearings concerning charges of misconduct were aired publicly and proved ill-founded, the court said that the statute was not in and of itself concerned with any rights

or privileges of third parties dealing with such agencies, and any such rights or privileges would have to be found elsewhere. Furthermore, the court noted, the public-at-large was as interested in the good quality of school personnel as was the school board.

[d] Decisions with respect to particular assemblages; held required to be open to public

In the following cases, the particular assemblages of public entities described were considered to be among those required by the mandate of a "public meeting" statute to be open to the public.

A city council meeting in closed session with the mayor and city attorney to discuss a public service commission proceeding to which the city was a party, at which meeting all members of the public were excluded, was held in *Laman v McCord* (1968) 245 Ark 401, 432 SW2d 753, to be violative of the state "public meeting" statute providing that "[e]xcept as otherwise specifically provided by law, all meetings formal or informal, special or regular, of the governing bodies of all municipalities, counties, townships, and School Districts, and all boards, bureaus, commissions, or organizations of the State of Arkansas, except Grand Juries, supported wholly or in part by public funds, or expending public funds, shall be public meetings." A judgment declaring that the meeting violated the statute and that the council could not meet secretly to discuss legal matters with the city attorney was accordingly affirmed. Stating that the city council was unquestionably the governing body of a municipality, and that its closed session was unquestionably a meeting, formal or informal, special or regular, the court queried as to how it could be said that the closed session was not a violation of the statute. The council contended that the statute should not

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be construed to apply to a meeting between the council and the attorney, the prediction being made that the city would be unable to prepare its cases for trial without disclosing its strategy and its weaknesses to its adversaries. As a practical matter, however, the court felt the council to be unduly apprehensive, and it pointed out that the city attorney, with the assistance of the mayor, department heads, and other municipal employees, could certainly prepare a case for trial without discussing his plans in detail with the city council. Regardless of such practical considerations, the "public meeting" statute itself effectively refuted the council's argument, the court continued, pointing out that the legislative mandate that except as otherwise "specifically" provided by law, all meetings of governing boards of municipalities should be public meetings, could not be misunderstood. The key word was "specifically," the court said, and while the legislature itself provided a specific exception for personnel matters in a later section of the "public meeting" statute, it did not see fit to provide a similar exception for meeting between a city council and a city attorney.

Construed in the light of the "public meeting" statute's objectives, the term "meeting" extended to informal sessions or conferences of the county board of supervisors designed for the discussion of public business, stated the court in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1965) 263 Cal App 2d 41, 69 Cal Rptr 480, holding that a luncheon gathering at the Elks Club, attended by the five county supervisors, the county counsel, county executive, county director of welfare, and several members of the Central Labor Council, AFL-CIO, at which the subject of discussion was a strike of social workers against the county and the latter's efforts to enforce an injunction secured in connection with

the strike, was such a meeting. The defendant board and its members further unsuccessfully contended that the occasion was a lawful exercise of the lawyer-client privilege existing between the supervisors and the county counsel, as their attorney, and that the pending lawsuit to restrain picketing and striking furnished the occasion for exercise of the privilege. Observing that the privilege cannot be invoked where the client's communication was not intended to be confidential, the court commented that none of the supervisors stated that he or any other supervisor had said anything to the county counsel in confidence, that none claimed attendance for the purpose of getting the county counsel's legal advice and none claimed receiving any, and that if any communication passed between the supervisors and their attorney, the record failed to reveal it. The court concluded that the luncheon meeting found no shelter under the lawyer-client privilege and that it violated the "public meeting" statute provision that "[a]ll meetings of the legislative body of a local agency shall be open and public."

Noting that the Hughes' Anti-Secrecy Act mandated that all public proceedings should be open to citizens of the state, the court in *State ex rel. Wincholt v La Porte Superior Court* (1967) 249 Ind 152, 230 NE2d 92, stated that "public proceedings" covered the voting and balloting upon public issues before a county council.

Where, at a public meeting of the town council concerning a proposed lease of certain town property to a club, the five town councilmen retired to a room closed to the public and sometime thereafter one of their number returned to the council chambers and announced to the persons in the audience that the lease had been tentatively approved, the court in *Scott v Bloomfield* (1967) 94 NJ Super 592, 229 A2d 667, affd 98 NJ

Super 321, 237 A2d 297, app dismd 52 NJ 473, 246 A2d 129, having concluded that the fact that the councilmen retired to a private room and later announced their decision indicated that they discussed in private the subject matter that was discussed in the open council chambers, held that the public was entitled to hear their discussion and how they voted and that their failure to do so was contrary to the "public meeting" statute providing that the public should be admitted to any meeting of a public body at which official action was taken. Plaintiffs' motion for summary judgment was accordingly granted in their action challenging both the validity of a resolution adopted by the council a week after the meeting granting the lease and the execution of the lease itself.

[e] — Held not required to be open to public

In the following few cases the courts held that the particular gatherings by public entities were not described among those assemblages required by a "public meeting" statute to be open to the public.

While in the following two California cases, particular gatherings were found not to be such as were required to be open to the public under the mandate of that state's "public meeting" statute, it is to be noted that subsequent amendments to the statute create a doubt as to whether the same result would now be reached.¹⁴

Thus a dinner gathering attended by eight of the nine members of the city planning commission, which was given by a man who shortly thereafter applied for a change of zoning and at which

general discussions were held relative to community planning and zoning, at which time the dinner-giver was interrogated as to certain matters, was held in *Adler v City Council of Culver City* (1960) 184 Cal App 2d 763, 7 Cal Rptr 805, not to be a meeting within the purview of the state's "public meeting" statute providing that "[a]ll meetings of the legislative body of a local agency shall be open and public," even if the statute were assumed to govern meetings of charter cities. It seemed evident to the court that the language of the statute was not directed at anything less than a formal meeting of a city council or one of the city's subordinate agencies, for if it were, no practical line could be drawn. A judgment adverse to the plaintiffs in their taxpayers' action for a declaratory judgment invalidating an ordinance enacted by the city council rezoning certain property of the dinner-giver, such rezoning having been recommended by the commission, was accordingly affirmed.

Likewise, a public school teacher had requested of a school district's board of trustees that a matter concerning his possible Communist affiliations be heard at a public hearing; at the outset of the second hearing, the chairman of the board stated that the board had reviewed the teacher's answers to the questions asked at the first hearing and that it considered the answers evasive; the chairman then said that the board had decided to allow the teacher another opportunity to answer the questions, and in *Huntington Beach Union High School Dist. v Collins* (1962) 202 Cal App 2d 677, 21 Cal Rptr 56, cert den 371 US 904, 9 L Ed 2d 166, 83 S Ct

¹⁴ In that connection, attention is called to *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, wherein the court, in considering the 1961 amendments to the "public meeting" statute,

was of the opinion that such amendments in effect extended the coverage of the statute to informal sessions or conferences of public entities designed for the discussion of public business.

210, affirming a judgment adjudging that the teacher might be dismissed, the court rejected the teacher's contention that the board held an executive session at which it made a vital decision as to the case and that this was contrary to the "public meeting" statute. The teacher claimed that since he had previously requested a public hearing, it was improper for the board to consider any phase of the matter at an executive session. Pointing out that the record did not show that the board took any action toward the teacher's discharge or heard any additional evidence pertaining thereto at the executive session, and that the only decision reached during the executive session was to allow the teacher another opportunity to answer the questions which he failed to answer at the first hearing, which opportunity was rejected, the court concluded that if there was a technical violation of the "public meeting" statute, it in no way prejudiced the teacher's rights and did not invalidate the action of the board.

Having observed that the directive in § 2 of the state's "public meeting" statute that "[a]ll public proceedings are open to the public, and all persons are permitted to attend any meetings of these boards or agencies," was qualified by § 3, I, which provided that "[n]othing contained in this chapter shall be construed to prevent these bodies or agencies from holding executive sessions but any decisions made during any executive session must be recorded and made available for public inspection promptly, and no ordinances, orders, rules, resolutions, regulations, contracts, appointments or other official actions shall be finally approved in executive session," the court in *Selkove v Bean* (1968) 109 NH 247, 249 A2d 35, 38 ALR3d 1066, held that a municipal finance committee, the duties of which included reviewing the budget proposed by the city comptroller and the making

of recommendations to the city council which would take final action upon the budget, could properly meet in executive session for the purpose of reviewing the budget and receiving information relating to it, so long as no final action was taken by the committee and no recommendation to the city council was formulated or agreed upon. It appeared that a newspaper reporter and his employer had obtained an injunction restraining exclusion of themselves and the public from meetings of the committee except when, in accordance with § 3, II, of the "public meeting" statute, the committee as a "body or agency" was entitled to exclude the public while "considering or acting upon" certain specified subjects, such as employee demotions. The plaintiffs contended that the injunction was properly entered because the statute restricted the holding of executive sessions to meetings at which only the matters specified by § 3, II, were to be considered, and that § 3, II, was to be incorporated by reference to § 3, I. Rejecting this contention, the court stated that this would deny to § 3, I, the significance to which it was properly entitled, and that § 2 was qualified or limited by both § 3, I, and § 3, II. Pointing out that the controlling provisions with respect to the finance committee meetings were those of § 3, I, the court found that neither the purpose of the meetings nor the action taken by them went beyond what § 3, I, permitted, and that since the injunction would preclude consideration in closed session of any matter not specified in § 3, II, it would in effect nullify the provisions of § 3, I. Finding the injunction to have been improvidently granted, the court consequently vacated it.

[f] Sufficiency of compliance

In the following case, the contention was rejected that a public entity undertook action at an "executive session" forbidden by a "public meeting" statute

from taking formal actions, the court finding that the meeting presumably complied with the statutory requirement that it be open to the public.

A police constable who was discharged by the police chief immediately requested an opportunity to appear before the board of trustees, the board meeting in its regular session that day. The constable was given an opportunity to present his viewpoint and was extended an opportunity to resign but refused to do so, and the board thereupon unanimously voted to discharge him. In these circumstances, the court in *Thomas v Board of Trustees* (1966) 5 Ohio App 2d 265, 34 Ohio Ops 2d 432, 215 NE2d 434, held that the voting to discharge the constable was done in an "executive session" within the meaning of a "public meeting" statute providing in effect that all meetings of any board of any township were declared to be public meetings open to the public at all times and that no resolution, rule, regulation, or formal action of any kind should be adopted at any executive session of any such board. The only persons present when the action complained of was taken, beside the trustees, were the constable and the police chief. Observing that an executive session of a governmental body was normally one which was limited to the members of the body and such other persons as were specially invited by the body to attend the meeting, the court commented that the test was not who was present at the meeting, but whether the meeting was open to the public, and that if it were, but no one chose to attend it except the members of the body, then it was not legally an executive session of the body. Affirming a judgment against the constable in his action to recover wages allegedly due him, the court said that there was no evidence that the public was excluded from the meeting at which the trustees acted, that the action was taken at the

end of a regular meeting, and that there was a presumption that the trustees complied with the law and that such meeting was open to the public.

§ 7. Validity of action taken in violation of statute

[a] View that action is not invalidated
Under the provisions of some "public meeting" statutes, courts have held that the fact that action has been undertaken by a public entity in violation of such a statute does not invalidate such action.

Even assuming that a dinner gathering which was attended by members of the city planning commission and which was given by a land developer who thereafter applied for a change of zoning (which change was granted by the city council after two public hearings following acceptance with modifications of the commission's recommendations), and at which general discussions were held relative to community planning and zoning, was violative of the "public meeting" statute providing that "[a]ll meetings of the legislative body of a local agency shall be open and public," the court in *Adler v City Council of Culver City* (1960) 184 Cal App 2d 763, 7 Cal Rptr 805, held that it did not follow that the subsequent action of the zoning commission (much less that of the city council) was invalidated by the commission's violation of the statute. A judgment adverse to certain taxpayers in their action to have the ordinance rezoning the property declared invalid was accordingly affirmed. While noting that the statute provided no penalty for infraction and no method of enforcement and that ordinarily this implied an absence of intent to make a statute mandatory, the court commented that, in view of the public purpose of the "public meeting" statute, which was directed toward the conduct of public officials, those statutes which punished as misdemeanors

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offenses and delinquencies which did not otherwise prescribe punishments, were applicable and gave mandatory complexion to this particular statute. This was one of those instances in which the prescribed penalty for violation of the law precluded all others, the court went on, and left private persons, although taxpayers, without any right to declaratory relief or injunction incidental thereto. The court then concluded that the dinner, even if unlawful, could not have infected the proceedings of the city council in granting the application upon conditions somewhat different from those recommended by the planning commission, which was strictly an advisory body, pointing out that the council itself had fully complied with the terms of the "public meeting" statute and that its members evidently had no knowledge of the dinner.

And considering an appeal in an action brought by a taxpayers' association to nullify a comprehensive city zoning ordinance, the court in *Claremont Taxpayers Assn. v Claremont* (1963) 223 Cal App 2d 589, 35 Cal Rptr 907, stated that the association's contentions regarding purported violations of the "public meeting" statute were unavailing because, even if true, the ordinance would not be invalidated.

Likewise, in *Old Town Development Corp. v Urban Renewal Agency* (1967) 249 Cal App 2d 313, 57 Cal Rptr 426, it was stated that insofar as the allegations suggested that there was a collective commitment or promise by a majority of the members of the agency to make a positive or negative decision on the matters in question in violation of the "public meeting" statute, it would not invalidate the action subsequently taken.

A state's "public meeting" statute provided that its provisions and all rights of citizens under the statute might "be enforced by mandamus or injunction,

whether or not any other remedy [was] legally available" and that "[a]ny person . . . violating any provision . . . shall be guilty of a misdemeanor . . ." and in *Dobrovolsky v Reinhardt* (1970, Iowa) 173 NW2d 837, it was held that the statute limited the remedies for violations of the statute and it could not be reasonably interpreted as providing that violations thereof rendered the actions of a public body void or voidable, for if the legislature had so desired, the statute could have been easily written to so provide.

A section of a "public meeting" statute provided that "[u]pon proof of failure by any officer to carry out any of his responsibilities for public notice of meetings, for holding them open to the public, or for maintaining public records thereof . . . an appropriate order [may be issued] requiring such officer to carry out as to meetings thereafter held all such responsibilities proved not to have been carried out . . . ; but action otherwise duly taken at any meeting shall not be invalidated by the failure of any officer to carry out the said responsibilities for public notice of meetings. . . . The remedy created hereby is not exclusive, but shall be in addition to every other available remedy," and in *Elmer v Board of Zoning Adjustment* (1961) 343 Mass 24, 176 NE2d 16, certain plaintiffs, aggrieved by a decision of a board of zoning adjustment, unsuccessfully contended that the express exemption from invalidation of only failure in respect of public notice of meetings meant that, for validity, the meeting was required to be open to the public. The imprecise statute did not intend that result, the court stated, adding that it would be unlikely that any of the public would be in attendance at a meeting of which no notice was given and that it would be arbitrary to let the validity of a meeting held without public notice and unattended by the public

depend upon whether the meeting was declared "open." Pointing out that the "public meeting" statute established that the public policy of open meetings was to be enforced by injunction against officers who disregarded the policy or by other "available remedy," the court commented that invalidation of action taken, although it would tend strongly to enforce the policy, would not be primarily a remedial measure. There were enough prospective difficulties in the implementation of such a policy, particularly as applied to boards and agencies which, after due public hearing, with opportunity for all concerned to present their arguments and counterarguments, must weigh and determine important legislative, executive, and quasi-judicial matters, the court went on, without putting otherwise valid action at the risk of a subsequent determination that the particular deliberations were required to be held under public scrutiny.

[b] View that action is voidable

The view was taken in the following cases, by virtue of the terminology of a "public meeting" statute, that action undertaken in violation of its requirement of open meetings is generally voidable.

Since the state's "public meeting" statute provided that official action taken in violation of the requirements of the statute should be voidable in a proceeding in the state superior court, the court in *Wolf v Zoning Board of Adjustment* (1963) 79 NJ Super 546, 192 A2d 305, reasoned that mere absence of bad faith or other impropriety on the part of a public body should not ordinarily move the court to stay its hand in voiding official action taken contrary to the statute upon proper application therefor. The court rejected the contention that the legislative intent was that the voiding of such action should rest in the discretion of the judge, stating that it found this to be too

narrow a view of the intent and underlying policy of the statute. Noting that the purpose of the "public meeting" statute was to implement the declaration therein that it was "the public policy . . . to insure the right of the citizens . . . to attend meetings of public bodies . . . for the protection of the public interest," and that the object of the statute was primarily prophylactic and not necessarily restricted to the creation of remedies for illegalities at particular public meetings from which the public was excluded, the court commented that appropriate implementation of that object and policy called, as a general rule, for the superior court upon proper application to set aside any official action which was taken without compliance with the prescriptions of the statute. Observing that it need not then decide if no discretion was ever to be reserved to the court to save the validity of official action taken in contravention of the statute, the court added that that question might be left to await a case where a sufficiently impelling counter-interest might be argued to bespeak sustaining the action impugned.

And in *Kramer v Board of Adjustment* (1963) 80 NJ Super 454, 194 A2d 26, the court granted plaintiff's motion for summary judgment in an action challenging the validity of a zoning variance, it being said that the original resolution of the board of adjustment was void for failure to comply with the "public meeting" statute.

And seemingly to similar effect as the preceding cases is *Bogert v Allentown Housing Authority* (1967) 426 Pa 151, 231 A2d 147, in which the court, having noted that the "public meeting" statute provided that a violation of it exposed any member of a board so acting to a fine upon a summary conviction thereof, stated that the remedy so provided was

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not exclusive, for if it were, the entire purpose of the statute would be nullified and the statute could be violated with particular impunity. In the immediate case involving an equity action by property owners and taxpayers against a housing authority, allegations of violations of the "public meeting" statute having been made, the court stated that in order to require the authority to live up to the mandate of the statute, the plaintiffs had to resort to equity or other appropriate remedy. Reversing a judgment dismissing the complaint, the court commented that since the inability of the plaintiffs to set forth a sufficient cause of action in the complaint was clearly thwarted by the authority's refusal to disclose its actions, past or contemplated, in violation of the statute, the trial court should have given the plaintiffs an opportunity to amend their complaint upon such disclosure being made.

[c] Effect of subsequent ratification on action otherwise voidable

Assuming that action undertaken by a public entity in violation of a "public meeting" statute is voidable, the view has been taken in the following cases that a perfunctory ratification at a later meeting open to the public will not suffice to cure the original defective meeting so as to validate the action.

It appeared in *Kramer v Board of Adjustment* (1963) 80 NJ Super 454, 194 A2d 26, that a zoning board of adjustment conducted a public hearing concerning the refusal of a building inspector to grant a permit; that, thereafter, the board met three times in executive session, and at the final session voted to recommend that the variance be granted; that 2 weeks later the mayor and council voted to adopt the board's recommendation at a public meeting; that some 3 months later the case of

Wolf v Zoning Board of Adjustment (1963) 79 NJ Super 546, 192 A2d 305, *supra* § 7[b], caused the board to be concerned over the legality of its vote taken in executive session, and it re-submitted its earlier resolution and again voted to recommend that the variance be granted; and that at a regular public meeting the next day, the governing body again adopted the board's recommendation and granted the variance. Granting plaintiff's motion for summary judgment in an action challenging the validity of the variance, the court held that the original resolution of the board was void for failure to comply with the "public meeting" statute and the mandate of *Wolf*. The defendant board, governing body, and person granted the variance unsuccessfully contended that there was a sufficiently impelling counterinterest in the immediate case, by virtue of the language in *Wolf*, that the question need not then be decided that "no discretion [was] ever to be reserved to the court to save the validity of official action taken in contravention of the statute [since that] may be left to await a case where a sufficiently impelling counter-interest may be argued to bespeak sustaining the action impugned." Stating that a formal "re-run" of the board's vote nearly 4 months later could not possibly be in the spirit of the "public meeting" statute, the court commented that just as the board was obligated to act within its jurisdictional powers, it was also obligated to comply with the statute, and in this sense, compliance was not to be construed as a patchwork attempt to rectify or supplement proceedings which were clearly deficient. The court concluded that if it were to permit the actions of the board to stand, it would be tantamount to an express sanction to circumvent the requirements of the "public meeting" statute, for every commission, board, and

public authority would not be invited to vote in executive session and take the risk that the proceedings would go unchallenged, and if challenged on appeal, the administrative tribunal simply could meet the objection by hastily revoting at a public meeting. Such a procedure, even if taken in good faith, could not be condoned, the court concluded.

Concluding that the fact that at a public meeting concerning a proposed lease of certain town property, the five town councilmen retired to a private room and then returned to the council chambers and announced their tentative approval of the lease, indicated that the councilmen discussed in private the subject matter that was discussed in the open council chambers, and that the failure to allow the public to hear their discussion and how they voted was in violation of the "public meeting" statute, the court in *Scott v Bloomfield* (1967) 94 NJ Super 592, 229 A2d 667, *aff'd* 98 NJ Super 321, 237 A2d 297, *app dismd* 52 NJ 473, 246 A2d 129, stated that even though there was a formal passage of the resolution at a public meeting 1 week later, that meeting was merely a perfunctory rerun of the action that the council had already determined to follow and did not cure any defect of the previous meeting. Plaintiffs' motion for summary judgment in their action challenging not only the validity of the resolution adopted at the second meeting, but also the execution of the lease itself, was accordingly granted.

§ 8. Who is, under statute, entitled to relief against its violation

The courts in the following cases were concerned with the question of who came within the class of persons authorized by the particular "public meeting" statute to seek relief from its violation.

Observing that the "public meeting" statute authorized any "interested per-

son" to seek legal restraint against its violation or threatened violation, and that a complaint alleged that a newspaper guild was a labor organization composed of professional working newspapermen, the court in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, stated that whether that allegation made out adequate standing to sue was at least questionable; the court specifically pointed out, however, that the defendant county board of supervisors and its members did not question the guild's standing to sue. Pointing out that the right to disclosure was an attribute of citizenship not possessed in any increased degree by persons or groups whose interest in access to news was economic and that the right should logically extend standing to any county elector, the court concluded that had the issue been raised in the trial court, amendment of the complaint to add appropriate parties and allegations would have been little more than a matter of mechanics, and under the circumstances there was substantial compliance with the statute.

Although the state's "public meeting" statute provided for the issuance by a circuit court of injunctions against violations of the statute upon application by "citizens," the court in *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693, held that a circuit court could properly entertain the application of one "citizen" since, in the construction of words found in the state statutes, the singular included the plural and vice versa.

§ 9. Propriety of particular injunctive relief

Under "public meeting" statutes authorizing the entry of injunctive relief against a public entity to restrain future violations of the statutes, the courts, evidently relying upon rules generally appli-

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cable in determining the propriety of the scope of injunctive relief granted,¹⁵ have on occasion found fault with the particular injunctive relief granted as against a public entity.

Thus, in the following case the court was of the opinion that too-narrow injunctive relief had been awarded as against the public entity involved.

Having noted that a final judgment enjoined a board of public instruction from the holding of any meeting or conference session "at which are held any discussions on current, or foreseeably so, matters, not privileged, pertaining to the duties and responsibilities" of the board, the court in *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693, stated that the "public meeting" statute contained no exception, and that the final judgment would be amended to enjoin any such meetings "at which are held any discussions on matters pertaining to the duties and responsibilities" of the board. Although the board complained that certain matters could no longer be discussed in private, the court answered that the causes of complaint, if deserving, were matters for the legislature, not the courts.

On the other hand, the courts in the following cases found that the injunctive relief awarded against the public entities involved was too broad.

The "public meeting" statute did not abolish the statutory opportunity of boards of supervisors to confer privately with their attorney on occasions properly requiring confidentiality, stated the court in *Sacramento Newspaper Guild, etc. v Sacramento County Board of Supervisors* (1968) 263 Cal App 2d 41, 69 Cal Rptr 480, holding that a preliminary injunction which, aside from the statutory exceptions for national security and personnel matters, prohibited nonpublic meetings of three or more of the five

supervisors "for whatever purpose" was too broad.¹⁶ The court accordingly modified the injunction by adding a new paragraph providing that it should not prevent the board from consulting privately with the county counsel or other attorney representing the board under circumstances in which the statutory lawyer-client privilege might lawfully be claimed.

And in *Selkove v Bean* (1968) 109 NH 247 249 A2d 35, 38 ALR3d 1066, supra § 6[e], the court, having found that an injunction which would preclude a municipal finance committee from considering in closed session any matter not specified in one subsection of the "public meeting" statute, would have the effect of nullifying the provisions of an earlier subsection which also allowed certain closed sessions, vacated the injunction.

§ 11. Miscellaneous

In the following case, the court considered the rights of those attending meetings required to be open to the public by mandate of the state's "public meeting" statute.

Having observed that it was clear that the purpose of the state's "public meeting" statute was to prohibit secret or "star chamber" sessions of public bodies, to require such meetings be open, and to permit the public to be present unless within the statute's exceptions, the court in *Dobrovolny v Reinhardt* (1970, Iowa) 173 NW2d 837, observed that the statute did not require the public body to allow any individual or group to be heard on the subject being considered.

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Notwithstanding that a "public meeting" statute subjecting a public officer to criminal prosecution for failing to adhere to its mandate failed to make the officer's scienter an element of the offense, the court in the following case took the view that scienter was required to be both charged and proved.

15. See 42 Am Jur 2d, Injunctions § 297.

That portion of the "public meeting" statute providing that any public officer who violated the provisions of the statute "by attending a meeting not held in accordance with the provisions hereof," was guilty of a misdemeanor was unsuccessfully attacked on grounds that

scienter was not made a specific element of the offense, in *Board of Public Instruction v Doran* (1969, Fla) 224 So 2d 693, the court holding that the statute was to be construed as impliedly requiring a charge and proof of scienter.

Consult POCKET PART in this volume for later case service

State of Alaska

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1972

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ADJOURNED June 18, 1972



LAWS OF ALASKA

1972

Source

SB 253

Chapter No.

98

AN ACT

Relating to public agency meetings.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

- Section 1. AS 44.62.310(a) is amended to read:

(a) All meetings of a legislative body or of an administrative body, board, commission, committee, subcommittee, authority, council, agency, or other organization, including subordinate units of the above groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other boards, agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public money or authorized to spend public money, are open to the public except as otherwise provided by this section.

- Sec. 2. AS 44.62.310(c)(1) is amended to read:

(1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;

- Sec. 3. AS 44.62 is amended by adding a new section in Article 6 to read:

Sec. 44.62.312. STATE POLICY REGARDING MEETINGS.

(a) It is the policy of the state that

(1) the governmental units mentioned in sec. 310(a) of this chapter exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

(b) Sec. 310(b)(1) of this chapter shall be construed narrowly in order to effectuate the policy stated in (a) of this section and avoid unnecessary executive sessions.



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SB 280

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MESSAGES FROM THE SENATE

SB 206 am H A message from the Senate dated February 1, 1972 was read, stating the Senate has concurred in the House amendment to SENATE BILL 206 and the enrolled copy of SENATE BILL 206 amended by the House (relating to fees for duplicate sport fishing and hunting licenses; and providing for an effective date) is transmitted herewith for the signatures of the Speaker and Chief Clerk. It was signed by the Speaker and the Chief Clerk and returned to the Senate.

HOUSE JOI request o

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REPORTS OF STANDING COMMITTEES

HB 555 The Labor and Management Committee has had HOUSE BILL NO. 555 (establishing the official state plumbing code) under consideration and a majority of the Committee members recommends it do pass with the following amendment:

amendment No. 1 by the Labor and Management Committee:

Page 1, line 14: Delete "15" and insert "13"

The report was signed by Mr. Orbeck, Chairman, and concurred in by Orbeck, McGill, Banfield and Ferguson.

HOUSE BILL NO. 555 was referred to the Finance Committee.

SB 253 The Judiciary Committee has had SENATE BILL NO. 253 (relating to public agency meeting) under consideration and a majority of the Committee members recommends it do pass. The report was signed by Mr. Moran, Chairman, and concurred in by Moran, Hillstrand, Randolph, Flynn, Rose, Barber and Banfield.

SENATE BILL NO. 253 was referred to the Rules Committee for placement on the calendar.

The Speaker stated that without objection, the reading of the Judiciary Committee Chairman's report on SB 253 would be waived and it would be printed in the journal. There being no objection, the report appears as follows:

"Judiciary Committee Report

on

SENATE BILL NO. 253

This bill makes clear that state law requiring that meetings of public agencies be open to the public applies to the legislature and its subordinate units. The bill also reemphasizes state policy against closed meetings of public bodies. In sec. 3, AS 44.62.312(a) is based on California Government Code Annotated, sec. 54950.

William J. Moran
William J. Moran, Chairman

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Article 6. Agency Meetings Public.

Section

- 310. Agency meetings public
- 312. State policy regarding meetings

Sec. 44.62.310. Agency meetings public. (a) All meetings of a legislative body, of a board of regents, or of an administrative board, commission, committee, subcommittee, authority, agency, or other organization, including subordinate units of the same, groups, of the state or any of its political subdivisions, including but not limited to municipalities, boroughs, school boards, and all other agencies, assemblies, councils, departments, divisions, bureaus, commissions or organizations, advisory or otherwise, of the state or local government supported in whole or in part by public moneys, authorized to spend public money, are open to the public except as otherwise provided by this section. Except when voice votes are authorized, the vote shall be conducted in such a manner that the public may know the vote of each person entitled to vote. This section does not apply to any votes required to be taken to organize the afore-mentioned bodies.

(b) If excepted subjects are to be discussed at a meeting, the meeting must first be convened as a public meeting and the question of holding an executive session to discuss matters that come within the exceptions contained in (c) of this section shall be determined by a majority vote of the body. No subjects may be considered at the executive session except those mentioned in the motion calling for the executive session unless auxiliary to the main question. No action may be taken at the executive session.

(c) The following excepted subjects may be discussed in an executive session:

- (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the government unit;
- (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
- (3) matters which by law, municipal charter, or ordinance are required to be confidential.

(d) This section does not apply to

- (1) judicial or quasi-judicial bodies when holding a meeting and making a decision in an adjudicatory proceeding;

reasonable public notice shall be given for all meetings required under this section. Any provision taken contrary to this section is void. (§ 1 art VI (ch 1) ch 119; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 98 SLA 1972; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976)

History of amendment. — The 1976 amendment added the second and third paragraphs of subsection (a).
Amendment of the board of governors by the Alaska Bar Association in 1978 was not subject to the

requirements of this section. *Horowitz v. Alaska Bar Ass'n*, Sup. Ct. Op. No. 2059 (File Nos. 4310, 4311). P.2d (1980).
Am. Jur. 2d reference. — 2 Am. Jur. 2d. Administrative Law, §§ 281, 282.

Sec. 44.62.312. State policy regarding meetings. (a) It is the policy of the state that

(1) the governmental units mentioned in AS 44.62.310(a) exist to aid in the conduct of the people's business;

(2) it is the intent of the law that actions of those units be taken openly and that their deliberations be conducted openly;

(3) the people of this state do not yield their sovereignty to the agencies which serve them;

(4) the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know;

(5) the people's right to remain informed shall be protected so that they may retain control over the instruments they have created.

AS 44.62.310(c)(1) shall be construed narrowly in order to liberate the policy stated in (a) of this section and avoid unnecessary executive sessions. (§ 3 ch 98 SLA 1972)

Legislative note. — AS 44.62.312(a) is codified in Gov't C.A., sec. 54950.
Am. Jur. reference. See note under AS 44.62.310.

Legislative history report. — For report on ch. 98, SLA 1972 (SB 253), see 1972 House Journal, p. 158.

Article 7. Legislative Review of Rules.

Section

Legislative annulment of regulations and review

H A R V A R D
L A W R E V I E W

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OPEN MEETING STATUTES: THE PRESS FIGHTS FOR THE "RIGHT TO KNOW"

"The people have a right to know!" — that is the battle cry in the crusade to ensure that government operate in public. Organized activities to this end began in 1950 when the Freedom of Information Committee of the American Society of Newspaper Editors directed its attention to problems of domestic news suppression,¹ and the press, assisted on occasion by various civic groups, has remained the principal moving force behind the campaign.² There are many varied objectives: elimination of closed trials, admission of photographers to courtrooms, greater access to government records, more frequent and exhaustive presidential press conferences, television and radio coverage of sessions of Congress, fewer closed congressional committee meetings, and less restriction on the release of information by government officials. One important achievement of this campaign has been the recent enactment by state legislatures of "open meeting" laws, which grant the public a legal right to attend meetings of state, county, and local governmental bodies. The struggle for these statutes has been motivated by a feeling that an unnecessarily large amount of state and local government business is conducted behind closed doors.³ The greatest number of complaints about unjustifiable exclusion has been directed at municipal bodies; a survey released in 1957 by the *Worcester* (Massachusetts) *Telegram*, for example, reported that of seventy-seven communities in central Massachusetts and northern Connecticut there were ten in which the meetings of all boards and commissions were closed.⁴ Although such exclusion was not a new phenomenon,⁵ its persistence and possible increase, the press felt, called for corrective legislation. Twenty-six states now have open meeting statutes applicable to state and local governmental bodies;⁶ ten years ago only one of these laws existed in its

¹ See *Preface to Cross, THE PEOPLE'S RIGHT TO KNOW* at xiv-xv (1953); Address by James S. Pope, Executive Editor of the *Courier-Journal* (Louisville), Dec. 11, 1958, in *SCHOOL OF JOURNALISM, UNIVERSITY OF MISSOURI, SPEECHES OF THE FIRST ANNUAL FREEDOM OF INFORMATION CONFERENCE 3* (1959).

² See *WESTERN GOVERNMENTAL RESEARCH ASS'N, CONFERENCE PROCEEDINGS 39-40* (1956); Address by Richard Carpenter, Executive Director & General Counsel of the League of California Cities, Meeting of the County Supervisors Ass'n of California, Oct. 5, 1961. See generally Pickerell, *Secrecy and the Access to Administrative Records*, 44 *CALIF. L. REV.* 305-12 (1956).

The House Committee on Government Information, headed by the late Representative Moss, and the Senate Subcommittee on Constitutional Rights, chaired by Senator Hennings, were instrumental in assuring greater access to information concerning the federal government. See Hennings-Moss Act, 72 Stat. 547, 5 U.S.C. § 22 (1958).

³ See *Advancement of Freedom of Information Comm. of Sigma Delta Chi, Annual Reports 1957-1961*. For a comprehensive report of the situation in one state, see *MASS. LEGISLATIVE RESEARCH BUREAU, REPORT SUBMITTED BY THE LEGISLATIVE RESEARCH COUNCIL RELATIVE TO OPEN MEETINGS OF STATE AND LOCAL BOARDS AND COMMISSIONS 26-70* (1957).

⁴ See *Bull. of the American Soc'y of Newspaper Editors*, March 1, 1957, p. 15.

⁵ See *SIEBERT, THE RIGHTS AND PRIVILEGES OF THE PRESS 66-70* (1934).

⁶ *ALA. CODE tit. 14, §§ 393-94* (1958); *ALASKA COMP. LAWS ANN. § 2A-11-91*

present form.⁷ Yet success has been neither immediate nor uniform. In several states passage was achieved only after previous defeats, and in sixteen states bills introduced during the past five years have failed of final adoption.⁸ Since the press is ever urging new efforts in "the continuing cold war against governmental secrecy,"⁹ it is clear that state legislators will continue to be confronted by open meeting legislation, either in the form of new statutes or, possibly, amendments to those already enacted but considered inadequate. Hence, it is worthwhile to consider the arguments for and against open meeting laws, to explore the statutory techniques adopted to accommodate conflicting considerations, to examine the reaction to these statutes of the press and of the officials to whom they apply, and to propose a model open-meeting statute adapted to resolving competing interests and considerations.

I. A CRITIQUE OF THE OPEN MEETING PRINCIPLE

The basic argument for open meetings is that public knowledge of the considerations upon which governmental action is based is essential to the democratic process.¹⁰ The people must be able to "go beyond and behind" the decisions reached and be apprised of the "pros and cons" involved if they are to make sound judgments on questions of

(Supp. 1959); ARK. STAT. ANN. §§ 6-602, -605 (1956), §§ 6-603, -604 (Supp. 1961); CAL. GOV'T CODE §§ 54950-60 (applicable to local bodies only); CONN. GEN. STAT. REV. § 1-21 (1958); DEL. CODE ANN. tit. 29, § 5109 (Supp. 1960); HAWAII REV. LAWS §§ 7A-1 to -3 (Supp. 1960); IDAHO CODE ANN. § 59-1024 (Supp. 1961) (applicable to local bodies only); ILL. REV. STAT. ch. 102, §§ 41-44 (1961); IND. ANN. STAT. §§ 57-601 to -609 (1961); LA. REV. STAT. §§ 42.5-8 (Supp. 1952); ME. REV. STAT. ANN. ch. 1, §§ 36-41 (Supp. 1961); MD. ANN. CODE art. 23A, § 8, art. 25, § 5, art. 41, § 14 (1957); MASS. GEN. LAWS ANN. ch. 30C, § 11A, ch. 34, § 9F, ch. 39, §§ 23A-C (Supp. 1961); MINN. STAT. §§ 10.41, 471.705 (1957); NEV. REV. STAT. §§ 241.010-.040, 244.080, 268.305, 386.335, 396.100 (Supp. 1960); N.J. REV. STAT. §§ 10:4-1 to -5 (Supp. 1961); N.M. STAT. ANN. § 5-6-17 (Supp. 1961); N.D. CENT. CODE § 44-04-19 (1960); OHIO REV. CODE ANN. § 121.22 (Page Supp. 1961); OKLA. STAT. ANN. tit. 25, §§ 201-02 (Supp. 1961); PA. STAT. ANN. tit. 65, §§ 251-54 (1959); UTAH CODE ANN. §§ 52-4-1 to -4 (1960); VT. STAT. ANN. tit. 1, §§ 311-14 (1959); WASH. REV. CODE §§ 42.32.010-.030 (Supp. 1958); WIS. STAT. § 14.00 (1959).

This Note discusses only open meeting statutes of general application and does not include statutes or charter provisions establishing open meeting requirements for a single body or single type of body; however, the same considerations seem applicable to such provisions. Open records acts, another fertile branch of "right to know" legislation, are excluded from the scope of this Note.

⁷ ALA. CODE tit. 14, §§ 393-94 (1958).

⁸ Arizona (three defeats); Florida, Kentucky, Michigan, New Hampshire, and Texas (two defeats each); Colorado, Kansas, Mississippi, Montana, New York, South Carolina, Tennessee, Virginia, West Virginia, and Wyoming (one defeat each). See Advancement of Freedom of Information Comm. of Sigma Delta Chi, Annual Reports 1957-1961.

⁹ Material Enclosed in Letter From Chairman of the Associated Press Managing Editors Ass'n Freedom of Information Comm. to the *Harvard Law Review*, Nov. 11, 1961. (In response to inquiries soliciting information, the *Review* received correspondence from newspaper editors in twenty-five states, city managers and city attorneys of several communities, and from a number of associations of local governmental officials and national newspaper organizations. All letters cited in this note are on file at the office of the Harvard Law Review Association, where they may be inspected.)

¹⁰ "A popular Government, without popular information, or the means of acquiring it, is but a Prologue to a Farce or Tragedy; or, perhaps both." 9 WRITINGS OF JAMES MADISON 103 (Hunt ed. 1910) (letter to W. T. Barry, Aug. 4, 1822).

policy and to select their representatives intelligently.¹¹ The presence of outside observers is an invaluable aid in making such information available, for official reports, even if issued, will seldom furnish a complete summary of the discussion leading to a particular course of action.¹² Even though only newspaper reporters and a few interested citizens actually are present, the benefit of granting access to governmental meetings will inure to a far larger segment of the population, because those who do attend will pass on the information obtained. It is further argued that decisions which result in the expenditure of public funds ought to be made openly so that the people can see how their money is being spent; ¹³ publicity of expenditures further serves to deter misappropriations, conflicts of interest, and all other forms of official misbehavior.¹⁴ Several other considerations support the principle of open meetings. Government will be more responsive to the governed if officials are able to ascertain public reaction to proposed measures. Public meetings also may operate to provide officials with more accurate information; individual citizens will be able to correct factual misconceptions, particularly in local government where the public is apt to have greater knowledge of the issues involved. Then too, as people better understand the demands of government and the significance of particular issues, they will be better prepared "to accept necessary, and perhaps difficult and unpalatable, measures essential to the public good."¹⁵ Finally, open meetings foster more accurate reporting of governmental activities. Even when meetings are closed, some hint of what occurs generally reaches the press; but such reports are often incomplete and slanted according to the views of the informant.¹⁶ To restrict the press to such sources of information is a disservice both to the public, which is misled, and to the officials, who may be judged on the basis of these distorted reports.¹⁷

¹¹ A Memorandum on Open Meetings From J. R. Wiggins to the Board of Commissioners of the District of Columbia, March 27, 1951, p. 7, on file in the office of the American Society of Newspaper Editors, Wilmington, Delaware.

¹² Even the reports of congressional debates published in *The Congressional Record* are frequently revisions of the actual remarks, although the debates are open and alterations thus subject to contradiction. See Neuberger, *The Congressional Record Is Not a Record*, N.Y. Times, April 20, 1958, § 6 (Magazine), p. 14.

¹³ The governor of one state attempted to defend closed sessions for investigating the spending practices of state institutions by commenting: "You would discuss your personal finances around the dinner table, not out in the street or at your next-door neighbors"; one newspaper editorially replied: "Whose dinner table does . . . [the governor] think he's sitting at? . . . The public business is the public's business. Open up those dining room doors, governor! Let's all have a seat at the table." Material Enclosed in Letter From Chief Editorial Writer of the *Chicago Sun-Times* to the *Harvard Law Review*, Nov. 28, 1961.

¹⁴ See Yankwich, *Legal Implications of and Barriers to the Right To Know*, 40 MARQ. L. REV. 3, 35 (1956).

¹⁵ WIGGINS, FREEDOM OR SECRECY 20 (1956) [hereinafter cited as WIGGINS].

¹⁶ "I do not remember a single executive session but that there was a report in the newspaper. . . . [T]he report was tinged and slanted by the personal opinion and desires of the person who had revealed what had transpired." Chamberlain, *Let's Take the Hush! Hush! Out of Local Government*, reprinted in part in Bull. of the American Soc'y of Newspaper Editors, March 1, 1958, p. 10.

¹⁷ See WIGGINS 22.

→ esp. in Alaska

-see Palm Beach v. Bradison

Granting the virtue of open meetings in general, substantial objections can be made to enacting the principle as a legal requirement. Publicizing proposed governmental action may benefit citizens whose interests are adverse to the general community or harm individual reputations. In some cases, particularly when sharply conflicting interests must be accommodated, freedom from the pressure of public opinion may be desirable; the delegates to the Constitutional Convention, for example, felt constrained to work in secrecy.¹⁸ Even in less unique circumstances "there is something to be said for open covenants, unopenly arrived at."¹⁹ One public official has remarked that "there are many details, ramifications and opinions that no sound administrator . . . would care to express in public,"²⁰ and it appears that officials are often reluctant to request information at open meetings lest they create a public image of ignorance.²¹ In addition, public officials are prone to waste time making speeches for the benefit of an audience, while in a closed meeting they "are less on their dignity, less inclined to oratory."²² If the meeting is for preliminary consideration of action, there are additional objections. An open meeting requirement will tend to disadvantage subordinate officials by publicizing their disagreement with policies that they must administer. And publicity of proposals put forth during preliminary discussions may frustrate ultimate agreement, for an official hesitates to abandon a view that he has publicly advocated.²³ A final objection to an open meeting requirement arises from the tendency of the press toward "sensational" reporting. All too frequently newspaper stories are distorted by the bias of the reporter or his paper. Even when there is no bias, newspapers prefer to emphasize as "newsworthy" only "controversial matters about which there is some conflict or . . . those items which tend to make legislators appear substantially less than bright."²⁴ It has even been contended that the need

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¹⁸ "The debates were secret, and fortunately so, for criticism from without might have imperilled . . . [the] work . . . so great were the difficulties encountered from the divergent sentiments and interests of different parts of the country . . ." 1 BRYCE, *THE AMERICAN COMMONWEALTH* 24 (2d ed. 1908). It has been observed, however, that because of the secrecy of the convention *The Federalist* had to be written to achieve acceptance of the Constitution. WIGGINS 9.

¹⁹ Sommers, *Kick Against the Goat*, 48 *NAT'L CIVIC REV.* 15, 19 (1959).

²⁰ *Ibid.*

²¹ A Letter From Chief Editorial Writer of the *Chicago Sun-Times* to the *Harvard Law Review*, Nov. 28, 1961, states:

[I]t is not so much an unwillingness to express public views that accounts for the desire for secrecy as it is the need to cover up just plain ignorance that so many public officials have. That is the basis for the one argument for secret meetings that might have some validity. . . . In a secret meeting a public official can honestly confess ignorance of a subject and seek enlightenment from his fellow committee members and witnesses. He would not be able to bring himself to do this in a public meeting and such reluctance might have an adverse effect on the proceedings.

²² *THE INTERNATIONAL CITY MANAGERS' ASS'N, THE TECHNIQUE OF MUNICIPAL ADMINISTRATION* 23 (4th ed. 1958).

²³ See PICKERELL & FEDER, *OPEN PUBLIC MEETINGS OF LEGISLATIVE BODIES—CALIFORNIA'S BROWN ACT 26* (1957) (hereinafter cited as PICKERELL & FEDER); Peterson, *The Legislature and the Press*, 27 *STATE GOV'T* 223, 224 (1954).

²⁴ Letter From Richard Carpenter, Executive Director & General Counsel of the League of California Cities, to the *Harvard Law Review*, Nov. 16, 1961.

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It is ings of Englan with ha tectio debates of Cor in this for wha publica to atte Since and Pa tion al people legislat custom 1704; approx in rece ments sions :

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for "right to know" laws has been exaggerated, as "editorials and news articles on star chamber sessions and the like have long been an easy, inevitably irrefutable, and popularly accepted part of every experienced, and frequently cynical, news editor's bag of tricks."²⁵ Although these arguments cannot be ignored, they do not compel the conclusion that a legal requirement of open meetings is untenable. Some have urged that the benefits of requiring that all governmental activity be done openly outweighs any disadvantages that may result;²⁶ perhaps a more rational approach would be to seek to devise a legal standard affording the fullest possible degree of openness while recognizing the interests promoted by governmental secrecy.

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II. THE COMMON LAW AND CONSTITUTIONAL BACKGROUND

It is clear that the public has no common law right to attend meetings of government bodies.²⁷ In seventeenth and eighteenth century England publication of parliamentary debates was frequently visited with harsh punishment. The motive for secrecy originally lay in protection from the Crown, but later it was thought useful to conceal the debates from the electorate as well. As put by a member of the House of Commons in 1733: "To print or publish the speeches of gentlemen in this House looks very like making them accountable without doors for what they say within."²⁸ Beginning in the late eighteenth century publication of debates was tolerated, but reporters had no privilege to attend and could be excluded upon the request of a single Member. Since 1874 a majority vote has been required to exclude the public, and Parliament has increasingly encouraged dissemination of information about its proceedings in an effort to exert greater influence on the people and to enlarge their role in the process of electing or rejecting legislation.²⁹ In the United States, the House of Representatives has customarily met in public since its inception, and the Senate since 1794; most congressional work is now done in committee, however, and approximately one-third of the committee meetings have been closed in recent years.³⁰ Thirty-four of the states have constitutional requirements that the legislature meet in public; in the others legislative sessions are open as a matter of custom.³¹ Apparently no state, however,

- important point

²⁵ WESTERN GOVERNMENTAL RESEARCH ASS'N, CONFERENCE PROCEEDINGS 30-31 (1956).

²⁶ See, e.g., Advancement of Freedom of Information Comm. of Sigma Delta Chi, Annual Reports 1957-1961.

²⁷ See CROSS, *THE PEOPLE'S RIGHT TO KNOW* 180-81 (1953).

²⁸ TASWELL-LANGMEAD, *ENGLISH CONSTITUTIONAL HISTORY* 588 (11th ed. Plucknett 1960).

²⁹ See *id.* at 588-91.

³⁰ See WIGGINS 9-10, 12-16; Advancement of Freedom of Information Comm. of Sigma Delta Chi, Annual Report 1961, at 11.

³¹ In Idaho and New Mexico the constitutional requirement is without exception, while in the other thirty-two states the legislature is permitted closed meetings for executive sessions or where secrecy is otherwise required. E.g., VT. CONST. ch. II, § 3; see CROSS, *THE PEOPLE'S RIGHT TO KNOW* 183-84 (1953). The constitutions of Alaska and Hawaii do not require open meetings of their legislatures, but presumably the pattern will be followed.

has a constitutional requirement of open meetings applicable to any governmental body other than the legislature.³²

Advocates of the "right to know" frequently insist that access to information about governmental activities is guaranteed by the Constitution of the United States.³³ They argue that the primary objective of the constitutional guarantees of free speech and a free press was to make government responsible to the governed by ensuring that the people would be informed about its conduct; thus they declare: "It is obvious that the freedom of the press implies the right to gather news and the right of those who possess information to impart news."³⁴ To the objection that the framers of the Bill of Rights were concerned with abolishing prior restraints to publication and not with guaranteeing access to sources of information, they answer that the Constitution is a "living" document and that "freedom of the press and speech under contemporary conditions includes the right to gather information from government agencies . . ."³⁵ Even the most ardent proponents of this view admit that the constitutional right of access, like the more traditional right of free speech, would not be absolute but instead subject to such limitations as might be necessary in the public interest.³⁶ Thus delimited, it does not seem unreasonable to extend constitutional guarantees to include matters of access as well, especially in light of the close interrelation between the arguments supporting the right of access and principles deemed fundamental to democratic government. However, no court — state or federal — has as yet accepted such an extension, although at least one judge has expressed his willingness to do so.³⁷ In view of this judicial reluctance, legislative enactment appears a much surer means of establishing a legal principle requiring open meetings.

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III. THE STATUTES

At present twenty-six states have open meeting laws applicable to a broad range of state, county, and local governmental bodies, both elective and appointive.³⁸ The novelty of the statutes and consequent scarcity of judicial interpretation, together with the wide variance in statutory language, pose obstacles to an overall evaluation of open meeting legislation; nevertheless, it is possible to consider some of the more basic problems presented: the scope of coverage, the extent to

³² See *id.* at 188, 192.

³³ See *id.* at 124-32; THAYER, *LEGAL CONTROL OF THE PRESS* 178 (3d ed. 1956); Parks, *The Open Government Principle: Applying the Right To Know Under the Constitution*, 26 *Geo. Wash. L. Rev.* 1 (1957); Note, *Access to Official Information: A Neglected Constitutional Right*, 27 *Ind. L.J.* 209 (1952).

³⁴ Parks, *supra* note 33, at 10 (all italicized in original); see Note, 27 *Ind. L.J.* 209, 212, 218-19 (1952).

³⁵ Parks, *supra* note 33, at 12 (all italicized in original).

³⁶ See Address by Harold L. Cross, Maine State Bar Ass'n Meeting, Aug. 21, 1952, in 41 *Me. S.B.A. Rev.* 33 (1952).

³⁷ See Mack, Appeal, 386 Pa. 251, 273, 126 A.2d 679, 689 (1956) (Musmanno, J., dissenting): "A print shop without material to print would be as meaningless as a vineyard without grapes, an orchard without trees, or a lawn without verdure. Freedom of the press means freedom to gather news, write it, publish it, and circulate it."

³⁸ See statutes cited note 6 *supra*.

which executive sessions are authorized, and the methods for enforcing the statutory directives.

A. Coverage

Statutory provisions for coverage fall into three broad categories. The first simply lists certain types of governmental organizations — for example, “all boards and commissions”³⁹ — without any additional phrase expressing a general principle of coverage. The danger in such an approach is that the list of enumerated organizations will be read restrictively, thereby excluding from coverage a number of bodies properly comprehended within the open meeting philosophy; “all boards and commissions,” for example, might be held to exclude city councils and public authorities. Perhaps cognizant of this danger, some legislatures have enacted introductory clauses directing that the act should be liberally construed in light of the declared policy of the state that its citizens are entitled to complete information about governmental affairs and the actions of public officials;⁴⁰ but when the enumerative clause is drafted more narrowly than the policy declaration, the former might well be held to control. A second group of statutes covers all bodies “established by law to serve a public purpose,”⁴¹ or “exercising legislative, regulatory or directive powers”;⁴² they thus seem to exclude any organization not explicitly authorized by statute, such as a subordinate organization established *ad hoc* by the parent itself. A third group refers to bodies “transact[ing] . . . governmental functions affecting any . . . [citizen]”⁴³ or includes a catchall provision embracing all state or local organizations that are either supported by or authorized to spend public funds.⁴⁴ These appear to represent the broadest possible approach and to include any official organization that plays a significant role in public affairs. In articulating the principle of broad coverage a public funds test seems most desirable; it affords a more certain and easily applicable criterion than a standard such as “governmental functions affecting any citizen.”

The most difficult coverage problem is whether the statutes apply to a governmental body's subordinate agencies or committees whose only function is to make recommendations to the parent organization.⁴⁵ In *Adler v. City Council*⁴⁶ members of the city planning commission attended a private factfinding dinner given by a potential applicant for a zoning change; the planning commission's sole function was to make recommendations to the city council, which then determined

³⁹ DEL. CODE ANN. tit. 29, § 5109 (Supp. 1960); see, e.g., VT. STAT. ANN. tit. 1, § 312 (1959).

⁴⁰ E.g., IND. ANN. STAT. § 57-601 (1961).

⁴¹ E.g., HAWAII REV. LAWS § 7A-1 (Supp. 1960).

⁴² WASH. REV. CODE § 42.32.010 (Supp. 1959).

⁴³ E.g., IND. ANN. STAT. § 57-602 (1961).

⁴⁴ See, e.g., ILL. REV. STAT. ch. 102, § 41 (1961); LA. REV. STAT. § 42:5 (Supp. 1952).

⁴⁵ This problem does not arise under the second class of statute referred to above — “established by law to serve a public purpose” — unless the subordinate body is expressly authorized by statute.

⁴⁶ 184 Cal. App. 2d 757, 7 Cal. Rep. 805 (Dist. Ct. App. 1960).