

A vibrant sunburst graphic with rays of light in shades of yellow and orange, emanating from a bright white center. The background of the slide is a solid dark blue.

The Sunshine Law

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The Sunshine Law



The Sunshine Law protects the rights of citizens

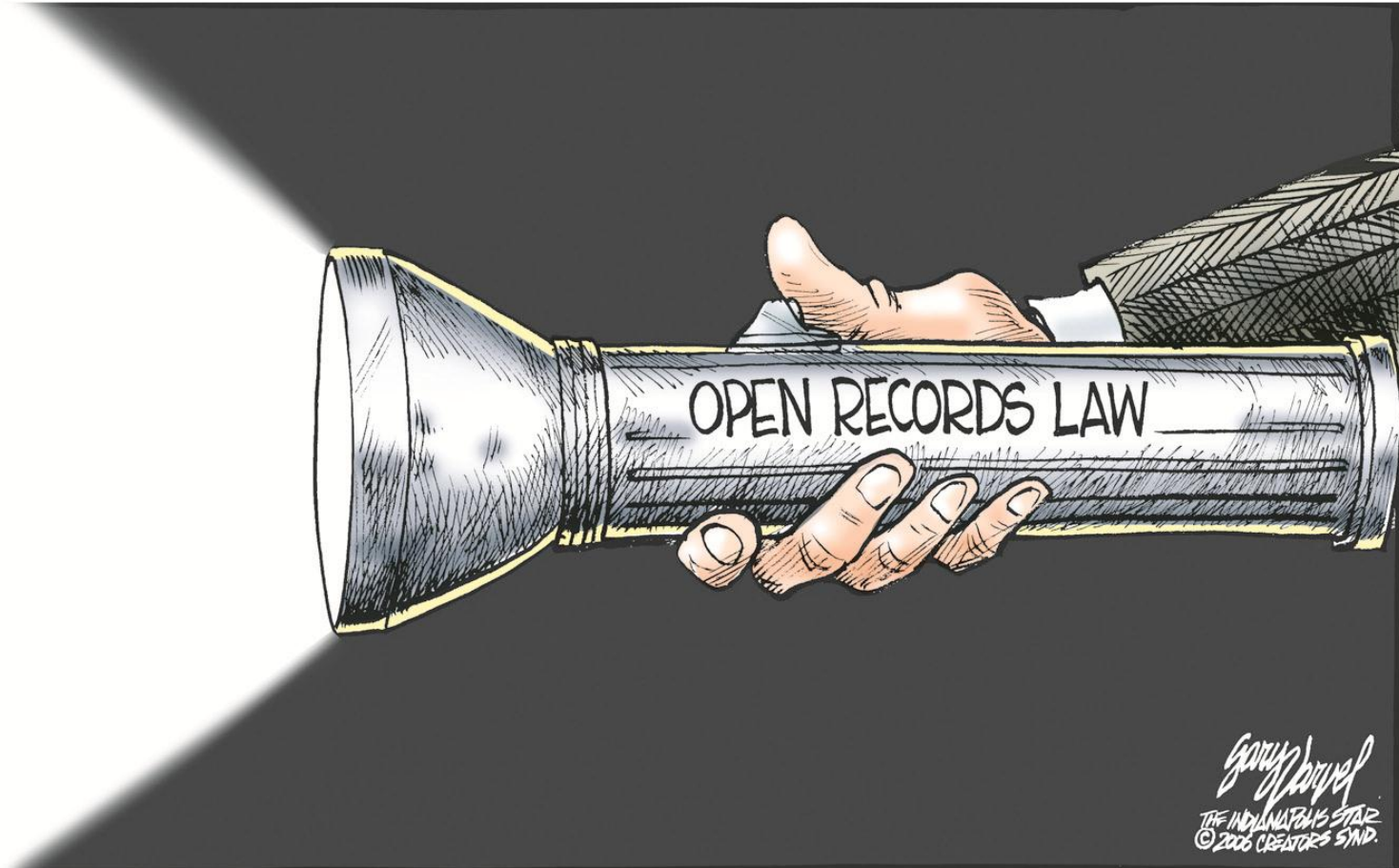
The Sunshine & Right to Know Laws

- Part of uniform system of jurisprudence
- Govern access to meetings of public agencies
- Read as one ¹

1. Schenck v. Twp. of Center, 893 A2d 849 (Pa. Cmwlth. 2006)

The Sunshine & Right to Know Laws

Weapon of Mass Instruction



What is an “Agency”?

- “the body, and all **committees** thereof authorized by the body to take **official action** or **render advice on matters of agency business.**”
- A County, City, Borough, Incorporated town, Township, School district, Vocational school district, County institution district

What is an “Agency”? (con’t)

- A “similar organization”
 - created by a statute
 - that performs an **essential governmental function** and
 - through the joint action of its members **exercises governmental authority and takes official action.**
- Charitable functions are distinguishable from governmental functions ¹

1. Chuplis v. Shenandoah Fireman’s Relief Ass’n, 474 A2d 743 (Pa. Cmwlth. 1984).

Committee of the Governing Body

- Members must **also be members of the governing body** ¹
- Members must be appointed by the agency and authorized to act on its behalf ²
- Committees created for the purpose of furnishing information or recommendations are not subject to Sunshine Law unless they have decision-making authority ³

1. Gowombeck v. City of Reading, 48 D & C 3rd 324 (CCP Berks County).

2. Lee Publications, Inc. v. Dickinson School of Law of the Pennsylvania State University Ass'n, 848 A2d 178 (Pa. Cmwlth. 2004)

3. Fraternal Order of Police Lodge No. 5 v. City of Philadelphia, 500 A2d 900 (Pa. Cmwlth. 1985)

Committee of the Governing Body

- Advisory committees with no authority to make binding recommendations are not agencies as defined by the Sunshine Law ¹
- An educational empowerment board authorized to approve a school improvement plan can “**take official action**” and is an agency required to conduct public meetings ²
- Representatives from three separate taxing authorities are not an “agency” ³

1. Ristau v. Casey, 647 A2d 642 (Pa. Cmwlth 1994).

2. Patriot-news v. Empowerment Team of Harrisburg School Dist., 763 A2d 539 (Pa. Cmwlth. 2000).

3. Mazur v. Washington County Redevelopment Authority, 900 A2d 1024 (Pa. Cmwlth. 2006)

Notice of Meetings

- An agency shall give notice of its first regular meeting at least three days in advance and shall give notice of the schedule of its remaining regular meetings
- Special meetings and rescheduled meetings require 24 hours
- Public notice is not required for an emergency meeting or conference
- Must be published or circulated within the political subdivision
 - Publication of a general news article does not satisfy this requirement ¹
 - Notice is a “formal printed announcement transmitting intelligence, information, or warning, to a particular person, or generally to all persons, who may read such notice” ¹

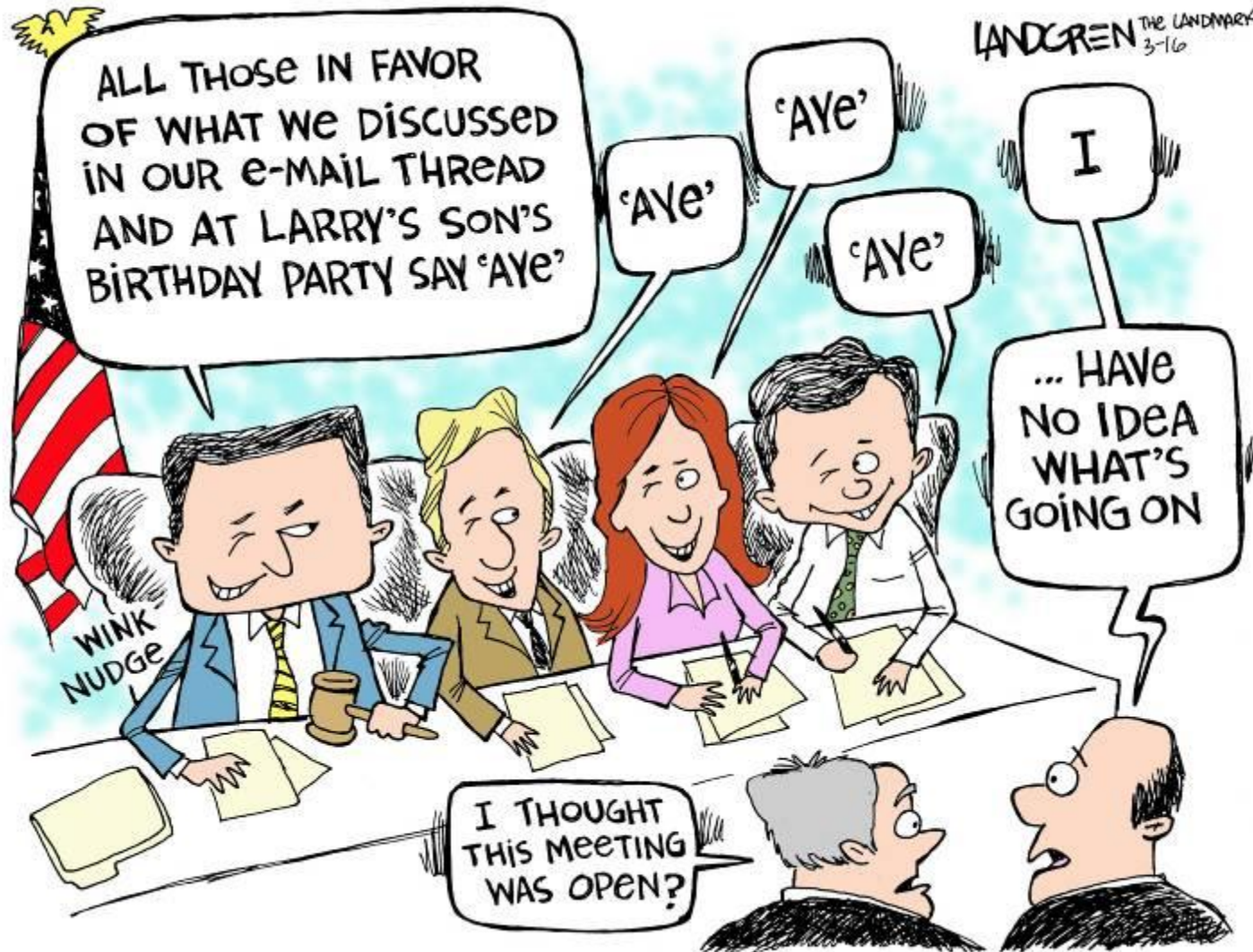
1. Bensalem Twp School Dist. V. Gigliotti Corp., 415 A2d 123 (Pa Cmwlth. 1980)

What Constitutes a Meeting?

- “Any prearranged gathering of an agency
 - which is **attended or participated in** by a **quorum**
 - held for the purpose of **deliberating agency business** or taking **official action**.”
- No quorum, no requirement to meet publicly ¹
- Participation by speaker phone permitted unless precluded by bylaws or policy ²

1. Muncy Creek Twp. v. Shipman, 573 A2d 662 (Pa. Cmwlth. 1990)
2. Babac v. Pa. Milk Marketing Board, 613 A2d 551 (PA 1992).

What Constitutes a Meeting?

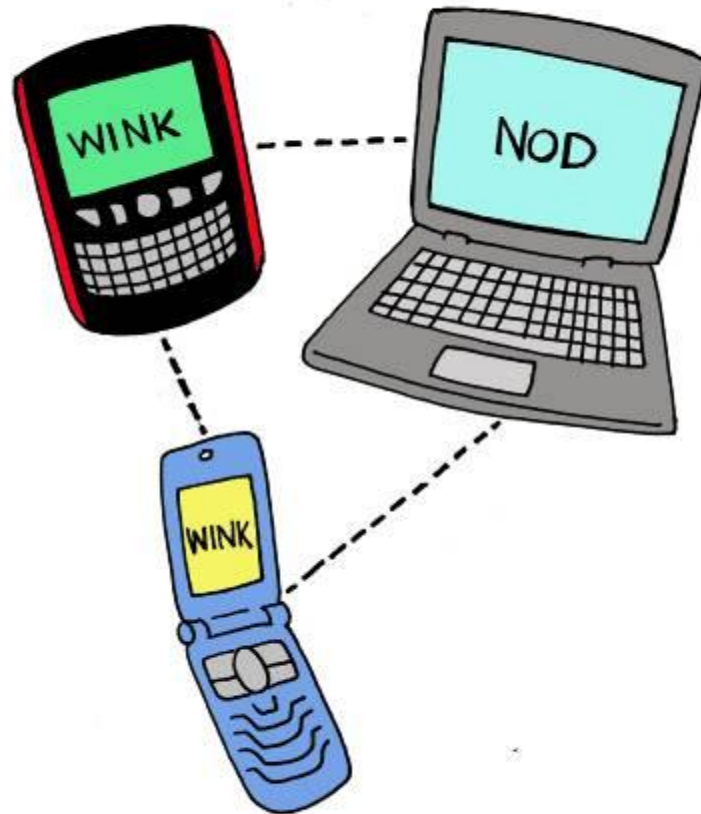


What Constitutes a Meeting?

PUBLIC MEETINGS (BEHIND CLOSED DOORS)



THEN



NOW

What is “Agency Business”?

- A zoning amendment constituted “agency business” of a board of township supervisors.
- Two out of three supervisors who met to discuss proposed zoning amendment constituted a “meeting”¹

1. Ackerman v. Upper Mt. Bethel Twp., 567 A2d 1116, 1119 (Pa. Cmwlth. 1989)

What Constitutes Deliberation?

- The Sunshine Law does not limit a board member to inquiring, questioning and learning about issues only at public meetings ¹
- Without a quorum, there is no requirement that deliberations take place in public ²

1. Conners v. West Greene School Dist., 569 A2d 978 (Pa. Cmwlth. 1989)

2. Muncy Creek Twp Citizen's Committee, 573 A2d 662 (Pa. Cmwlth. 1990)

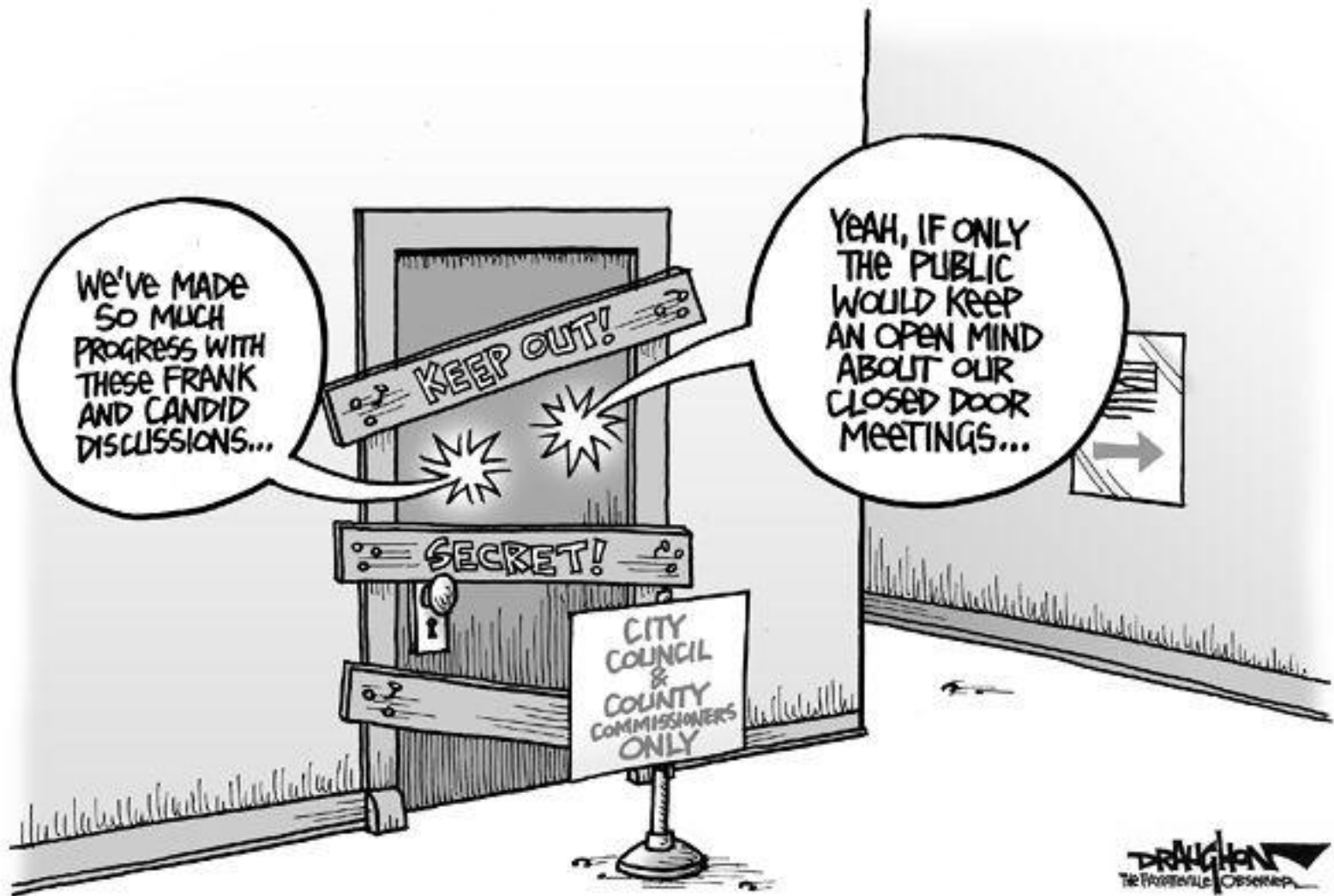
“Official Action”

1. Recommendations made by an agency pursuant to statute, ordinance or executive order.
 2. The establishment of **policy** by an agency.
 3. The **decisions** on agency business made by an agency.
 4. The **vote** taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order.
- Witness testimony does not constitute either “deliberation” or “official action” ¹
 - Submission of a recommendation constituted “official action” when made by an agency pursuant to statute ²

1. Taylor v. Borough of Emmaus, 721 A2d 388 (Pa. Cmwlth. 1998)

2. Moore v. Township of Raccoon, 529, 625 A.2d 737 (Pa. Cmwlth. 1993)

Executive Session



DRAUGHN
THE FAYETTEVILLE OBSERVER

Executive Session (con't)

An agency may hold an executive session for one or more of the following:

1. To discuss any matter involving the **employment**, of public officers or employees
2. To hold information, strategy and negotiation sessions related to collective bargaining agreements, **labor relations** and arbitration
3. To consider the purchase or lease of **real property**
4. To consult with professional advisors regarding **litigation** (current or potential)
5. To review and discuss agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law, including matters related to the initiation and conduct of **investigations** of possible or certain violations of the law and **quasi-judicial deliberations**.
6. For committees of a board or council of trustees of a State-owned, State-aided or State-related college or university or community college or of the Board of Governors of the State System of Higher Education to discuss matters of academic admission or standings.

Executive Session (con't)



Quasi-judicial deliberations are protected by the judicial or deliberative privilege ¹

1. Kennedy v. Upper Milford Twp Zoning Hearing Board, 834 A2d 1104 (PA. 2003)

Executive Session (con't)

- A supervisor has the right to study, investigate, discuss and argue problems and issues prior to the public meeting at which he may vote ¹
- Board is permitted to eliminate candidates through a vote as part of the discussion and deliberation authorized to be conducted in executive session ²

1. Palm v. Center Township, 415 A.2d 990 (Pa. Cmwlt. 1980)

2. The Morning Call v. Grossman, 642 A2d 619 (Pa. Cmwlt. 1994)

Executive Session (con't)

- Zoning boards are quasi-judicial bodies which perform formal fact-finding and deliberative functions in a manner similar to that of a court and are the proper subject of executive session ¹
- While the Sunshine Law permits an agency to discuss employment matters in a private executive session, the final vote on such matters must take place in a public meeting ²

1. Kennedy v. Upper Milford Twp Zoning Hearing Board, 834 A2d 1104 (PA. 2003)

2. Preston v. Saucon Valley School Dist., 666 A2d 1120 (1995).

Recording of Votes & Official Minutes

- The vote of each member must be publicly cast and, in the case of roll call votes, recorded.
- Minutes shall be kept of all open meetings of agencies to include:
 1. The date, time and place of the meeting
 2. The names of members present
 3. The substance of all official actions
 4. A record by individual member of the roll call votes
 5. The names of all citizens who appeared officially and the subject of their testimony.

Public Participation

- a reasonable opportunity shall be provided for residents or taxpayers to comment on matters of concern, official action or deliberation prior to official action.
- a person shall have the right to record proceedings. Agencies may adopt rules for use of recording devices

Violations

- Violations are subject to a fine not exceeding \$1,000 plus costs of prosecution.
- Willful or wanton disregard of law may result in an award of **attorney fees and costs**.
- A frivolous challenge may result in award of **attorney fees and costs of litigation**
- If a meeting does not meet the requirements of the Sunshine Law, a court may invalidate any business transacted.

Need Help?



- This Presentation is *NOT* the law. It cannot cover every situation
- If you have a question, contact your solicitor or the Office of Open Records:
openrecords@state.pa.us
717-346-9903