LET THE SUNSHINE IN: EXPLORING THE IMPACT OF PENNSYLVANIA'S SUNSHINE ACT ON SCHOOL BOARD DECISION-MAKING

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I. INTRODUCTION

Open meeting laws exist in each state and at the federal level, emphasizing the significant value placed on public awareness of and participation in government decision making. Demanding Transparency in Local Government: An Analysis of Trib Total Media, Inc. v. Highlands School District, 21 Widener L.J. 539, 541 (2012). Consider Pennsylvania's Sunshine Act, initially passed on July 3, 1986; its very first lines declare that "the right of the public to be present at all meetings and to witness the deliberation, policy formulation and decision making of agencies is *vital* to the enhancement and proper functioning of the democratic process and that secrecy in public affairs undermines the faith of the public in government and the public's effectiveness in fulfilling its role in a democratic society." 65 Pa.C.S.A. § 702(a) (emphasis added). In fact, the predecessor to the Sunshine Act as we know it today was passed in 1974 in order to "curb corruption and abuse of power by opening the decision-making processes of governmental agencies to greater public participation, scrutiny, and accountability" following the infamous Watergate scandal. Demanding Transparency, 21 Widener L.J. at 541; Tom Mistick and Sons, Inc. v. City of Pittsburgh, 130 Pa. Commw. 234, 237, 567 A.2d 1107, 1108 (1989).

These considerations are especially salient in the context of decision making by public school boards, given their fundamental role in shaping the minds of our country's youngest citizens. School districts today are regularly confronted with difficult, often polarizing questions on important subjects, such as the parameters of school curricula and student rights. Under such circumstances, it is paramount that school boards protect themselves, their students, their stakeholders, and their decision-making processes by understanding and adhering to applicable open meeting laws.

This article aims to provide guidance to Pennsylvania schools about best practices to ensure compliance with the Commonwealth's Sunshine Act. It will begin by providing an overview of the Sunshine Act's provisions. Next, it will identify school board practices which may be vulnerable to Sunshine Act challenges, as illustrated by recent Pennsylvania litigation. Finally, this article will conclude by highlighting best practices that school boards and school districts may adopt in order to minimize the risk of Sunshine Act challenges and maximize the meaningful participation of residents in their decision-making process.

II. THE SUNSHINE ACT, GENERALLY

With certain specified exceptions, the Sunshine Act requires that "[o]fficial action and deliberations by a quorum of the members of an agency shall take place at a meeting open to the public[.]" 65 Pa.C.S.A. § 704. Such a meeting must be publicly noticed at least 24 hours in advance by publication or circulation within the political subdivision where it is to take place, except in the case of emergency. Additionally, an agenda enumerating the business to be considered must be shared at least 24 hours in advance by physical posting at the location of the meeting and the principal office of the agency, as well as online, if applicable. Id. at § 709. The meeting must provide an opportunity for residents and taxpayers to comment on matters of public concern. Id. at § 710.1. Attendees may not be prohibited from recording the proceedings of a meeting. Id. at § 711. Finally, the Act requires that "[w]ritten minutes… be kept of all open meetings of agencies." 65 Pa.C.S.A. § 706. Such minutes must include: the date, time, and place of the meeting; the names of members present; the substance of all official actions and a record of votes taken thereon; and the names of all citizens who participated, as well as the subject of their testimony. Id.

Importantly, not every gathering constitutes a meeting triggering the requirements of the Sunshine Act. Under the Act, a meeting occurs, and thus must be open to the public, if "[a]ny prearranged gathering of an agency" is "attended or participated in by a quorum of the members of [the] agency" and is "held for the purpose of deliberating agency business or taking official action." Id. at § 703. The Pennsylvania Commonwealth Court has clarified that "deliberations," as they are contemplated by the Sunshine Act, do not include informal inquiry, questioning, discussion, or debate amongst agency members. *See*, *e.g.*, Conners v. West Greene Sch. Dist., 569 A.2d 978, 983 (Pa. Commw. 1989). Further, "agency business" is not merely any business considered by the agency, but rather is limited to "[t]he framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise or the adjudication of rights, duties and responsibilities, but not including administrative action." 65 Pa.C.S.A. § 703. Similarly, "official action" has been defined to include only "(1) [r]ecommendations made by an agency pursuant to statute, ordinance or executive order[;] (2) [t]he establishment of policy by an agency[;] (3) [t] he decisions on agency business made by an agency[; and] (4) [t]he vote taken by any agency on any motion, proposal, resolution, rule, regulation, ordinance, report or order." Id. In other words, where a conference produces no votes or decisions on a legal proposal, and no recommendation or establishment of policy emerges, no "official action" has taken place. *See*, *e.g.*, Ackerman v. Upper Mt. Bethel Tp., 567 A.2d 1116, 1119

(Pa. Commw. 1989).

III. MODERN CHALLENGES

A. Addressing Last-Minute Business: Coleman v. Parkland School District

Board members, administrators, and other public school district stakeholders can likely remember an occasion (or a few) on which important business affecting the district arose in the eleventh hour, just prior to a scheduled school board meeting. Such was the situation faced by the Parkland School District at its monthly board meeting on October 26, 2021. The teachers' association had voted to approve a new Collective Bargaining Agreement ("CBA") that very morning, meaning that consideration of the CBA was absent from the board meeting agenda, published 24 hours in advance on October 25, 2021. Coleman v. Parkland Sch. Dist., 305 A.3d 238, 241 (Pa. Commw. 2023). Nevertheless, the newly approved CBA was added to the agenda by motion at the outset of the October 26 school board meeting, as shown in the publicly posted meeting minutes. Id. The school board subsequently voted to authorize its President to execute the CBA. Id. Ratification of the board's vote regarding the CBA was placed on the agenda for the following school board meeting, to be held on November 16, 2021, 24 hours in advance. Id. at 242.

Jarrett Coleman, a district resident, filed a Complaint in the Court of Common Pleas of Lehigh County on the basis that the board had acted improperly to approve and execute the new CBA. Id. Coleman claimed that, while there were three exceptions to the general requirement that agenda items be posted at least 24 hours in advance of a public meeting, none applied to the school board's consideration of the CBA. Id. at 245. He identified these exceptions as: "(1) emergency business; (2) *de minimis* business not involving fund expenditure or entering into a contract that arises within the 24 hours preceding the meeting; or (3) *de minimis* business raised by a resident/taxpayer during the meeting that does not involve fund expenditure or entering into a contract." Id. (*citing* 65 Pa.C.S. § 712.1). Coleman argued that the newly executed CBA should be invalidated on this basis. Following an unfavorable determination, Coleman appealed to the Pennsylvania Commonwealth Court.

The Commonwealth Court agreed with Coleman that three exceptions existed to the general requirement of 24-hour advance notice for agenda items at public meetings and that approval and execution of the school district's CBA, which "involved expenditure of significant funds and/or entering into a contract without prior public notice," violated the provisions of the Sunshine Act. Id. at 249. However, the court refused to invalidate the CBA that the school board had approved and executed. Notably, it acknowledged that "[f]ailure to comply with the Sunshine Act [did] not *automatically* render the CBA null and void[,]" as "'a court's decision to invalidate an agency's action for violation of the Sunshine Act is discretionary, not obligatory.'" Id. at 249-50 (*quoting* Baribault v. Zoning Hearing Bd. of Haverford Tp., 236 A.3d 112, 120 (Pa. Commw. 2020) (*citing* 65 Pa.C.S. § 713)) (emphasis added). Most significantly, the court noted that "'[s]hort of fraud…, *most any Sunshine Act infraction could [be] cured by subsequent ratification at a public meeting*. Otherwise, governmental action in an area would be gridlocked with no possible way of being cured once a Sunshine Act violation was found to have occurred.'" Id. at 250 (*quoting* Lawrence Cty. v. Brenner, 135 Pa. Commw. 619, 582 A.2d 79, 84 (1990) (citation omitted). Thus, because the Parkland School District school board had properly ratified the execution of the CBA at its November 16, 2021 meeting, the court determined that it had cured its Sunshine Act violation from its October 25, 2021 meeting.As such, Coleman v. Parkland School District well illustrates an important consideration for school boards faced with last-minute business: while every effort should be made to comply with all obligations under the Sunshine Act, most errors and infractions will not lead to automatic invalidation of the action taken. So long as board members and district administrators are quick to recognize and act on such errors and infractions, they can be cured, and the action taken preserved, by ratification at a subsequent meeting.

*B. Waiting on the Claim: I-Lead Charter School-Reading v. Reading School District*Individuals who wish to challenge a perceived Sunshine Act violation should act quickly to do so, as illustrated by the court's disposition in I-Lead Charter School-Reading v. Reading School District. In that case, the plaintiff charter school, I-Lead, claimed that the Reading School District had improperly held closed meetings on various occasions to deliberate about revoking I-Lead's charter to operate. I-Lead Charter Sch. – Reading v. Reading Sch. Dist., 2017 WL 2653722 (E.D. Pa. June 20, 2017). The Sunshine Act requires that alleged violations be brought within 30 days of an open meeting or within 30 days of the *discovery* of a closed meeting; however, in no case may a challenge be asserted more than one year after the date of the meeting in question. Id. at *5.Significantly, I-Lead had asserted in its amended Complaint that it had discovered the alleged Sunshine Act violation within thirty days prior to commencing the action. Id. at *5. However, the court deemed this conclusory allegation insufficient to satisfy the applicable statute of limitations. It noted that I-Lead "provide[d] no allegations or evidence to support" that it had timely brought suit insofar as it failed to identify the dates of the challenged closed meetings or the date on which such meetings were discovered. Id.I-Lead Charter School-Reading v. Reading School District illustrates that the statute of limitations applicable to Sunshine Act claims is a brief one. As such, perceived Sunshine Act violations should be acted on quickly. Furthermore, individuals who wish to challenge an action under the Sunshine Act should take care to identify the date of such action, as well as the date on which they learned of it. Failure to note such details may well prove fatal to the claim.

C. Public Access Versus Public Safety: Herring v. Pittston Area School District

Questions regarding such issues as student health and safety, student rights, and curricula are of great importance to both parents and students. The potential social and emotional implications of such questions raise the possibility of heightened tensions amongst stakeholders at school

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board meetings and beyond, as illustrated in a recent matter in Luzerne County. In Herring v. Pittston Area School District, a 2021 school board meeting was forcibly postponed in light of safety concerns after a group of attendees became disruptive and refused to follow the district's then-in-place masking policy. Herring v. Pittston Area Sch. Dist., No. 2021-CV-12581 (Luz. Cty. 2021). Prior to the rescheduled meeting, the district's security team devised and implemented a temporary identification requirement for all school board meeting attendees. This security measure was in place for the following two school board meetings and removed when it became apparent that the security risk had subsided. District resident Benjamin Herring challenged the identification requirement as violating the Sunshine Act's open meetings provision after he was barred from attending the next school board meeting after refusing to show a Pennsylvania driver's license.

The trial court granted the school district's Motion for Summary Judgment on two grounds. First, it determined that no "official action" had been taken by the school board and that no "deliberations" had taken place upon any "agency business[,]" because the temporary identification requirement was fully devised and implemented by the school district's security team without any input or action by the school board. Second, the court acknowledged that Herring had been provided an opportunity to attend these meetings, as he possessed a valid Pennsylvania driver's license, and chose not to take it by refusing to show identification. In so finding, the court opined that "it [did] not appear to be too much of a burden to require photo identification" at the school board meetings.

Importantly, Herring v. Pittston Area School District illustrates that the right of public access to school board meetings is not impeded by safety considerations. While the Act's open meeting provisions require that the public be granted access to school board meetings, school districts can and should take action to address threats to the safety of their constituents.

IV. CONCLUSION

The cases above demonstrate that the Sunshine Act has the potential to implicate nearly every action taken or considered by school boards. As such, school boards must be intimately familiar with the Act's requirements. Most notably, school boards should: be aware of the contours of the exceptions to the Act's open meeting provisions, so that those exceptions are not applied too broadly; ensure that public notice of meetings is provided in accordance with the law; and act quickly to identify and remedy violations when they occur.

Justice Louis Brandeis famously quipped that "sunshine is the best disinfectant." At its core, the Sunshine Act is designed to promote and ensure governmental transparency. In the public-school context, where governmental transparency is of paramount importance, the Act provides necessary guardrails to guarantee that citizens are afforded a meaningful opportunity to participate in public decision-making processes that affect themselves, their children, and their communities.