



City of Philadelphia

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MEMORANDUM

~~Privileged and Confidential Advice of Counsel~~

PRIVILEGE WAIVED BY CLIENT ON 10/23/08

TO: Honorable Michael A. Nutter, Mayor

FROM: Shelley R. Smith, City Solicitor

DATE: October 23, 2008

SUBJECT: Sunshine Act and Closed Meetings

The question being raised is whether the Mayor may talk in a closed meeting with a quorum of City Council to brief them on various City financial and other matters. As I understand the purpose of the meeting, it is to provide information on specific issues, but no official policy will be debated or set. For the reasons stated below, I conclude such a meeting would be permissible.

Introduction

The Pennsylvania Sunshine Act requires all public agencies to take all official actions and conduct all deliberations leading up to official actions at public meetings. The Act covers all such actions by municipal governing bodies, committees of these governing bodies and municipal boards and commissions. The General Assembly, state executive branch agencies, school boards, authorities, boards of public colleges and universities, and governing boards of nonprofit corporations that have legally enforceable supervisory and advisory powers regarding the degree programs of the institution of higher education also are covered by the Sunshine Act. Official actions include making recommendations, establishment of policy, decisions on agency business and votes taken on any motion, resolution, ordinance, rule, regulation, proposal, report or order.

When the Law Applies

The Sunshine Act defines a "meeting" as any prearranged gathering of an agency attended by a quorum of members held for the purpose of deliberating agency business or taking official action. "Deliberation" means the discussion of agency business held for the purpose of

making a decision. “Agency business,” in turn, means framing or enacting any law or policy entering into a contract or adjudicating rights, duties and responsibilities.

In the scenario here, subject to certain limits, the members of City Council would not appear to be deliberating or voting on agency business. So long as no official action is set and no official policy is formalized, the meeting would appear to be permissible. The proposed meeting seems analogous to *Conners v. West Greene School Dist.*, 131 Pa.Cmwth. 95, 569 A.2d 978 (Pa.Cmwth. 1989). In this case, the court found that “the Sunshine Act does not require agency members to inquire, question and learn about agency issues only at an open meeting.” The court went on to state that “A ... board member is not foreclosed by the [Sunshine] Act from discussing and debating informally with others ... the pros and cons of particular proposals and matters....” *Id.* at 983.

“Checklist” of what is Permitted Under the Law

1. General Discussion
2. Informal Question and Answer
3. Sharing Information and Presentation of Ideas
4. Fact Finding & Information Gathering

What May Not Be Done at a Closed Door Meeting

1. Official action; this includes the establishment of policy, the making of any formal decisions and votes on any proposal, rule or law.
2. Official deliberation¹; this means the discussion of agency business for the purpose of making a final decision.

¹ It is worth noting that any violation can be cured at a subsequent open meeting where the official action takes place. *League of Women Voters of Pennsylvania v. Com.*, 683 A.2d 685 (Pa. Cmwth. 1996).