THE SUNSHINE ACT [*]

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The Pennsylvania General Assembly passed Act No. 1986-84, known as the "Sunshine Act," to replace the former "Open Meeting Law." The Sunshine Act became effective on January 3, 1987. Following is a summary of its provisions.

A. PURPOSE

"Democracy" — the concept upon which our American society is based. It is the concept that the people exercise self-government by choosing public officials who will represent the people's concerns in the legislative process.

If the people are to make an informed choice on election day, then they must be able to evaluate whether, in fact, they have been adequately represented. Thus, the public's ability to witness and evaluate public officials is the very essence of democracy.

Recognizing the importance of open government in the democratic process, the Pennsylvania General Assembly recently stated that:

> **[T]he *right* of the public to witness the deliberation . . . of agencies is vital to the . . . proper functioning of the democratic process and . . . secrecy in public affairs undermines the [public] faith . . ..**[1]

Accordingly, in 1986 the General Assembly repealed the 12 year old Open Meeting Law in favor of the Sunshine Act. The prior Open Meeting Law required only that "formal action" be taken at open

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[*] This article is an updated version of an article published at 136 P.L.J. 39 (1988) which is cited by Purdon's Pennsylvania statutes. The author is former councilman in the Municipality of Penn Hills, Pennsylvania, and he is an attorney with the law office of Technology & Entrepreneurial Ventures Law Group, PC.

1. Sunshine Act, PA. STAT. ANN. tit. 65, § 272(a) (Purdon Supp. 1989) (emphasis added); *see also* § 272(b) [hereinafter section citations refer to Sunshine Act unless otherwise specified]. All cases decided prior to 1988 were pursuant to the now repealed Open Meeting Law. Although the issues discussed in the article may be identical, the precedential value of such cases should be carefully scrutinized. Cases decided after 1988 pursuant to the new law are so indicated by a parenthetical notation.

meetings. "Formal action" did not include acts of deliberation, discussions and policy formulation — all of which are now covered by the Sunshine Act.

B. SCOPE

At the core of the Sunshine Act are two (2) separate and distinct rules with which agencies must comply: 1) the Open Meeting Rule; and 2) the Public Notice Rule.

1. *Open Meeting Rule*

The Sunshine Act provides 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 unless closed [by an exception]."[2]

The Sunshine Act provides that an "agency" is any "body, and all committees thereof authorized by the body to take official action or render advice,"[3] which exercises governmental authority and performs essential governmental functions.[4] Included in the definition are authorities, commissions, councils, and school boards.[5]

"Official actions" include recommendations, the establishment of policy, any decisions on agency business, and all voting.[6]

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2. § 274 (emphasis added); *see generally Dept. of Envtl. Res. v. Steward*, 24 Pa. Commw. 493, 496-7, 357 A.2d 255, 257-8 (1976) (consultation with subordinates not a meeting when Director has exclusive authority to take action); *Erie Mun. Airport Auth. v. Automation Devices*, 15 Pa. Commw. 273, 276-7, 325 A.2d 501, 503 (1974) (meeting at "private" club not a violation without evidence that public was excluded).

3. § 273 para. 3 [cited paragraphs in § 273 begin with the introductory paragraph of that section]; *see also Pennsylvania Legislative Corresp. Ass'n v. Senate of Pennsylvania*, 113 Pa. Commw. 367, 371-2, 537 A.2d 96, 97-8 (1988) (committee must be authorized to be an "agency").

4. *See* § 273 para. 3.

5. *Id.*; *see City of Harrisburg v. Pickles*, 89 Pa. Commw. 155, 166-8, 492 A.2d 91, 96-7 (1985), *citing, Appeal of Emmanuel Baptist Church*, 26 Pa. Commw. 427, 433-4, 364 A.2d 536, 539-40 (1976) (applicable to quasi-judicial agency); *Chuplis v. Shenandoah Firemen's Relief Ass'n*, 82 Pa. Commw. 212, 215-216, 474 A.2d 743 (1984) (not applicable to volunteer fire co.); *Consumers Education & Protective Ass'n*, 470 Pa. Commw. 372, 386-9, 368 A.2d 675, 683-4 (1977) (executive nominating committee); *Scott v. Shapiro*, 19 Pa. Commw. 479, 482-4, 339 A.2d 597, 598-599 (1975) (not applicable to transportation authority); *cf. In re* 42 Pa.C.S. § 1703, 394 Pa. 444, 482 A.2d 522 (1978) (judiciary not within scope of Public Agency Open Meeting Law). Caucus and meetings of ethics committee are specifically excluded from the Act. *See* §§ 273 para. 3, 282.

6. § 273 para. 12; *see Glennon v. Zoning Hearing Bd.*, 108 Pa. Commw. 371, 379-80, 529 A.2d 1171, 1175 (1987), *citing, Pae v. Hilltown Zoning Hearing Bd.*, 35 Pa. Commw. 229, 385 A.2d 616 (1978) (ZHB vote, but not subsequent written decision, was "formal action"); *Clapsaddle v. Bethel Park School Dist.*, 103 Pa. Commw. 367, 372-3, 520 A.2d 537, 540 (1987), *citing, Pickles, supra* note 5 (resolution, but not discussion, concerning personnel is "formal action"); *Skopic v. Zoning Hearing Bd. of Hemlock Tp.*, 80 Pa. Commw. 60, 63, 471 A.2d 123, 125 (1985) (vote must occur in public); *Wright v. Zoning Hearing Bd. of Bridgeville*, 86 Pa. Commw. 528, 531, 485 A.2d 870,

A "deliberation" is a "*discussion* of *agency business* held *for the purpose of* making a decision."[7] Agency business includes the framing, preparation or enactment of laws, the creation of liability, or the adjudication of rights.[8] Agency business does not include the execution of policies which were previously authorized by the agency at an open meeting.[9]

As a fundamental consideration, the Open Meeting Rule is defined in terms of a "discussion" held for the purpose of making a decision. It is not defined in terms of a "meeting" held for the purpose of making a decision.[10] Thus, even if a quorum of agency members "meet" for a purpose totally unrelated to agency business, the meeting must be made open to the public at the moment a "discussion" begins for the purpose of making a decision.

It may be argued that a "discussion" of agency business was not held "for the purpose" of making a decision. However, this argument should fail because any relevant discussion of agency business is probably more than frivolous talk — and anything more than frivolous talk probably has as its purpose the end decision.

The Open Meeting Rule requires only that "deliberations" and "official action" occur at open meetings — nothing more.[11] For example, it does not grant the public a right to speak at open meetings.[12] Thus, unless an agency's charter requires otherwise, all voting could legally take place at informal public "workshop sessions."

When agencies create committees, they should pay particularly close attention to the Open Meeting Rule. For example, assume that a 7-member council requires background research and advice on

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871 (1984) (ZHB must vote at open meeting); *Weder v. Pa. Dept. of Ed.*, 27 Pa. Commw. 328, 334-5, 365 A.2d 438, 441 (1976) (merely administrative process).

7. § 273 para. 7 (emphasis added); *see* § 273 paras. 4, 2. Because the Sunshine Act includes "deliberations" within its scope, the precedential value of certain cases is questionable. *See e.g. Judge v. Pocius*, 28 Pa. Commw. 139, 144, 367 A.2d 788, 790 (1977); *see also Guy v. Woods*, 104 Pa. Commw. 585, 588, 522 A.2d 193, 195 (1987); *Belle Vernon v. Bd. of Comm'rs of Rostaver Tp.*, 87 Pa. Commw. 474, 481, 487 A.2d 490, 493-4 (1985), *citing, Palm v. Center Tp.*, 52 Pa. Commw. 192, 415 A.2d 990 (1980).

8. § 273 paras. 4, 2.

9. *Id.*

10. §§ 274, 273 paras. 7, 4, 2.

11. *Id.*

12. *See Comm. v. Eisemann*, 308 Pa. Super. 16, 21, 453 A.2d 1045, 1048 (1982); *cf. Guy v. Woods, supra* note 7, 104 Pa. Commw. at 588-9, 522 A.2d at 195-196 (U.S. Constitution does not guarantee agency members the right to speak at committee meetings of which they are not members).

a particular project. As many as three council members could meet, research and discuss the project without regard to the Open Meeting Rule — since three members would not constitute a quorum of the committee.[13] However, if the council authorizes an advisory committee to do the background research and provide advice, then the Open Meeting Rule may apply.[14] Briefly stated, the committee itself may fall within the definition of "agency"; and thus, the committee may become an "agency" so that the Open Meeting Rule would apply to it without regard to the authorizing council.[15] Of course, because a committee can itself be an agency, any committee created by it (*i.e.* subcommittees) may also become an agency.

Whether a committee becomes an "agency" in-and-of-itself is based upon a three (3) part test:

1) The committee must be "of an agency";

2) it must be authorized; and

3) its purpose must be to render advice or to take formal action.[16]

The first part of the test may be interpreted in one of two ways. "Of an agency" means either a committee: 1) "authorized by an agency"; or 2) "of the membership of the authorizing agency." The more obvious interpretation would be that the Open Meeting Rule applies to committees which are merely authorized by an agency, regardless of committee membership. This broader interpretation would be consistent with the intent of the Act, because the purpose of committees is often to focus the *discussion* of business matters. Furthermore, there would be potential for abuse if an agency could authorize a committee to perform functions that would otherwise fall within the scope of the Act.

The second part of the test requires that the committee be authorized. Recently, it has been held that pursuant to the new Sunshine Act, *de facto* committees are not within the definition of agencies.[17]

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13. § 274.
14. *See* § 273 para. 3; *see also Pennsylvania Legislative Corresp. Ass'n, supra* note 3, 113 Pa. Commw. at 371-2, 537 A.2d at 97-8 (*unauthorized* General Assembly conference committee not within scope of the Act); *cf. Consumers Ed. & Protective Ass'n, supra* note 5, 470 Pa. at 386, 368 A.2d at 683 (General Assembly *advisory* committee not within scope of prior law).
15. § 273 para. 3.
16. *Id.*
17. *See Pennsylvania Legislative Corresp. Ass'n, supra* note 3, 113 Pa. Commw. at 371-2, 537 A.2d at 97-8.

Thus, even though committees may otherwise fall within the Open Meeting Rule, agencies may be able to allow their committees to evade the Rule by withholding committee authorization. Generally, this does not create an issue because a meeting of less than a quorum of agency members is not within the scope of the Act. However, in some instances, a group of less than a quorum of agency members have the influence and recognition of the agency, but because the group was not formally authorized, it may conduct its meetings without public scrutiny.

The third part of the test establishes two (2) types of committees which come within the Open Meeting Rule, those to: 1) take formal action; or 2) render advice.[18] Because there are few reasons to establish a committee if not to take formal action or render advice, this part of the test usually should be satisfied. However, committees authorized solely to conduct research and compile the results, without more, is probably not within the scope of the Act.

The prior Open Meeting Law, which was silent on the issue of *advisory* committees, was held only to apply to committees that were to make "binding" recommendations which would affect the substantive rights of any person.[19] The new law is explicit that advisory committees are within its scope.[20]

Assume, for example, that a council authorizes a committee merely to *research* a project. The committee researches and discusses the project in closed session and then returns to council with the research results, and, exceeding its authority, also renders *advice* for action. Subsequently, the council takes formal action based upon the committee's advice. Because the committee was not authorized to render advice or to take formal action, it could legally conduct its meetings in closed sessions.[21] Furthermore, to the degree that the committee rendered advice, it was to that degree a *de facto* advisory committee. Because neither research nor *de facto* committees are within the scope of the Sunshine Act,

18. § 273 para. 3.
19. *See Fraternal Order of Police v. City of Philadelphia,* 92 Pa. Commw. 340, 348, 500 A.2d 900, 905 (1985), *citing, Sanders v. Benton,* 579 P.2d 815, 819 (Okl. 1978), *appeal granted*, 508 A.2d 550 (1986) (advisory board without authority to make a binding recommendation was not within scope of prior law); *cf. King v. Perkasie Borough Zoning Hearing Bd.*, 122 Pa. Commw. 510, 515, 552 A.2d 354, 356 (1989) (violation of Act by planning commission, whose function is advisory, is irrelevant to a suit against the Zoning Hearing Board).
20. § 273 para. 3.
21. *See supra* note 17 and accompanying text.

the public's interest to witness committee deliberations could easily be evaded.[22] In this situation, courts should enforce the spirit of the Sunshine Act by drawing a distinction between wholly *de facto* committees and committees which exceed their authority. In the case of a committee exceeding its authority, a court has no alternative but to make a subjective evaluation of the "totality of the circumstances" to determine whether the Act was violated.

Although not technically part of the Open Meeting Rule, the Sunshine Act also grants the public a right to use recording devices at open meetings, except that the agency may adopt reasonable procedural rules.[23] Also, the agency must keep written minutes of open meetings which include the: 1) date, time and place of the meeting; 2) names of the members present; 3) substance of all actions and a record of the roll call votes; and 4) names of all citizens who appeared and the subject of their testimony.[24]

2. *Public Notice Rule*

The Public Notice Rule requires that whenever the Open Meeting Rule applies, the agency must give public notice that the meeting will be held.[25] Specifically, the Public Notice Rule requires notice of:

1) the first regular meeting of each year not less than three (3) days in advance the meeting;

2) the schedule of the remaining regular meetings; and

3) each special meeting or each rescheduled regular or special meeting at least 24 hours in advance of the meeting.[26]

When notice is required, it must contain the place, date and time of the meeting.[27] In addition, the notice must be *published* in a newspaper that has a circulation in the same political subdivision as the agency,[28] and it must be *posted* in an obvious location at the building where the meeting will be held.[29]

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22. *Id. See also supra* note 18 and accompanying text.
23. §§ 280, 281(a); *see Comm. v. Swank,* 72 Pa. D. & C.2d 754 (1975) (ordinance forbidding use of recording devices invalidated).
24. §§ 275, 276. In *Perin v. Bd. of Supervisors of Washington Tp.*, ___ Pa. Commw. ___, 563 A.2d 576, 580 (1989) it was alleged that minutes were in violation of the Act; however, the issue was not addressed for procedural reasons.
25. *See* §§ 279 (a)-(b), 274, 273 para. 2, 6, 8, 11, 13 and 14.
26. §§ 279(a), 273 para. 14.
27. § 273 para. 13. "Technical" non-compliance may be insufficient to invalidate agency action when there is no allegation of harm. *See e.g. Petition of Hazleton Area Sch. Dist.*, 107 Pa. Commw. 110, 114, 527 A.2d 1091, 1093

Pursuant to the previous law, courts have held that if notice is defective, then the agency may ratify the action at a later properly constituted meeting.[30] However, permitting ratification under the new law may violate the intent of the statute. Clearly, the new law protects the public's interest to witness agency discussions — not just the "formal action." Thus, once a discussion has taken place at an invalid meeting, the public's interest is not rectified by mere ratification.[31] However, it is unfortunate that even in light of the new law and its penalties, a court cannot recreate the private discussion that caused the injury.

Public notice is not required for an executive session, conference or when a meeting is called for the purpose of dealing with an actual or potential emergency.[32]

In conclusion, therefore, violations of the Sunshine Act will generally occur under the Open Meeting Rule whenever a quorum of agency members "discuss" agency business at a meeting closed to the public. Violations of the Public Notice Rule will occur if the discussion takes place at a meeting open to the public, but without proper notice.

C. EXCEPTIONS

(..continued)

(1987); *Jeske v. Upper Yoder Tp.*, 44 Pa. Commw. 13, 17-8, 403 A.2d 1010, 1012 (1979); *Bensalem Tp. Sch. Dist. v. Gigliotti Corp.*, 51 Pa. Commw. 609, 415 A.2d 123 (1980); *Coder v. Com. State Bd. of Chiro. Examiners*, 79 Pa. Commw. 567, 583-4, 471 A.2d 563, 570 (1984); *but see* § 273 para. 1 (strict construction of defined terms).

28. *Bensalem Tp. Sch. Dist., supra* note 27, 51 Pa. Commw. at 612-3, 415 A.2d at 124 (general news article is inadequate notice); *See East Rockhill Tp. v. P.U.C.*, 115 Pa. Commw. 228, 236-8, 540 A.2d 600, 605 (1988) (pursuant to Act, when an adjudicating body is considering specific information, notice need not be given to the parties of record).

29. §§ 273 para. 13, 279(a)-(b).

30. *See e.g. Erie Mun. Airport Auth., supra* note 2, 15 Pa. Commw. at 277, 325 A.2d at 503, *citing, Mateer v. Swissvale Borough*, 335 Pa. 345, 8 A.2d 167 (1939).

31. *See Martin v. Borough of Wilkinsburg*, ___ Pa. Commw. ___, 563 A.2d 958 (1989) (pursuant to prior law, ratification four months after action taken in violation of Act did not relate back to original date); *but see Bianco v. Robinson Tp.*, ___ Pa. Commw. ___, 556 A.2d 993, 994 (1989) (especially where no allegation fraud, a meeting to ratify improper action satisfied the legislative intent for the Act); *Mack v. Zoning Hearing Bd. of Plainfield Tp.*, ___ Pa. Commw. ___, 558 A.2d 616, 617 (1989) (by agreement of the parties, the trial court remanded the matter to the Board for purpose of rendering a decision at a public meeting [Act]); *Tredyffrin Tp. v. P.U.C.*, 115 Pa. Commw. 131, 133, 539 A.2d 925, 926 (1988) (appeal taken from action as ratified [Act]).

32. §§ 273 para. 8, 278(b), 279(a). Emergency determined by a "clear and present danger." *See Mills v. Bristol Tp. Bd. of Comm'rs*, 4 D. & C. 3d 559, 562-3 (1978); *see also Petition of Hazleton Area Sch. Dist., supra* note 27, 107 Pa. Commw. at 114, 527 A.2d at 1093 n. 3; *cf. Liquor Control Bd. v. Thornburgh*, 85 Pa. Commw. 267, 270, 481 A.2d 713, 714 (1984) (meeting could not be scheduled and act was ratified).

There are three (3) types of sessions that are listed as exceptions to the Open Meeting Rule, but in effect, they are also exceptions to the Public Notice Rule.[33] The exceptions are: 1) Conferences; 2) Certain Working Sessions; and 3) Executive Sessions.[34]

1. *Conferences*

A conference is "[a]ny training program or seminar, or any session arranged by Federal or State agencies for local agencies, . . . conducted for the *sole* purpose of providing information to agency members on matters directly related to their official responsibilities."[35] Conferences need not comply with the Public Notice Rule, because discussions of agency business may not occur at a conference.[36]

2. *Certain Working Sessions*

Boards of auditors may conduct closed working sessions "for the purpose of examining . . . the various . . . records with respect to which [they] are responsible, so long as official action is taken at a public meeting."[37]

3. *Executive Sessions*

An "executive session" is a "meeting from which the public is excluded, although the agency may admit those persons necessary [for] the purpose of the meeting."[38] In order for an agency to conduct an executive session, it must have a proper *purpose* and it must follow the proper *procedure.*[39]

There are six (6) proper purposes for which an executive session may be conducted:

> 1) To discuss any matter involving employment or appointment. However, the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matters be discussed at an open meeting.[40]

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33. *Compare* §§ 274, 277 (a)-(b) *with* §§ 278(b), 279(a); *see* § 277 (official action must occur at an open meeting).
34. § 274; *see* §§ 277, 278.
35. § 273 para. 6 (emphasis added); § 277 (b).
36. §§ 277(b), 279(a).
37. § 277(c).
38. § 273 para. 9.
39. § 278(a)-(b).
40. § 278 (a)(1); *see Pickles, supra* note 5, 89 Pa. Commw. at 165-8, 492 A.2d at 96-97 (under prior law, the resolution, but not discussion, concerning dismissal of policeman required to be at public meeting); *Roth v. Bur. of Verona,* 74 Pa. Commw. 352, 355, 460 A.2d 379, 381 (1983); *Jeske, supra* note 27, 44 Pa. Commw. at 16, 403 A.2d at 1012.

2) To hold sessions related to the negotiation of labor agreements.[41]

3) To consider the lease or purchase of real property.[42]

4) To consult with an attorney or professional advisor regarding actual or potential litigation.[43]

5) To discuss business, which if conducted at a public meeting, would lead to the disclosure of confidential information which is protected by law — such as investigations or quasi-judicial deliberations.[44]

6) For State-related higher educational institutions to discuss matters of the institution's academic standing.[45]

The proper *procedure* that an agency must follow also has been defined in the Sunshine Act. Specifically, it states that:

> **The executive session may be held during an open meeting, at the conclusion of an open meeting, or may be announced for a future time. The reason for holding the executive session must be announced at the open meeting occurring immediately prior or subsequent to the executive session.[46]**

Although it is clear that the "reason" for an executive session must be announced, it is not clear exactly how much information must be disclosed. A reasonable interpretation would be that the agency must at least disclose the proper "purpose" (*i.e.* which of the exceptions) for which the executive session is to be, or was, conducted.

Agencies may choose to publicly announce the executive session immediately before or after it takes place — *i.e.* at the last open meeting before, or the first open meeting after, the executive session.[47] If the purpose of the session is to discuss an employee or appointee, then the agency should publicly an-

41. § 278 (a)(2).
42. § 278 (a)(3).
43. §§ 278 (a)(4), 273 para. 10.
44. § 278 (a)(5); *see e.g. Mellin v. City of Allentown*, 60 Pa. Commw. 114, 117-8, 430 A.2d 1048, 1050-51 (1981) (disciplinary proceeding); *compare* § 278 (a)(5) *with* § 286.
45. § 278 (a)(6).
46. § 278(b) (emphasis added).
47. § 278(b).

nounce the session *before* it takes place so that any employees or appointees who may be adversely affected can exercise their *right* to require that the meeting be open.[48] Otherwise, the agency should at least give any individual employee or appointee prior notice of the session.[49] The purpose of such a requirement is to give the affected employees or appointees the right to require that the agency discuss matter which may affect them in public.

The Sunshine Act requires only that the agency announce the "reason," *i.e.* proper purpose, for the session — nothing more.[50] It does not require other public notice. However, the Act protects the agency members by providing:

> **If the executive session is not announced for a future *specific* time, *members* of the agency shall be notified at least twenty-four (24) in advance of . . . the executive session [of] the date, time, location and purpose . . ..[51]**

As a general rule, even though an agency may conduct a private executive session, "official action," *i.e.* voting, must occur at a public meeting. However, there is one notable and often overlooked provision of the Act which states:

> **[T]hose deliberations or official actions which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law . . . shall not fall within the scope of this act.[52]**

This extremely broad provision does not limit the exclusion to the jurisdiction, whether federal or state, or the type of law, whether statutory or common. The sentence in the Act immediately prior to the above-cited sentence repeals all state statutes inconsistent with the Act, except those "which specifically provide for confidentiality of information."[53] It is unclear whether the exclusion is intended to be limited to relevant state statutes.

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48. § 278 (a)(1).
49. *See* § 278 (a)(1)-(b).
50. § 278(b). *Compare* § 278(b) *with* §§ 279(a); *see* § 273 paras. 9, 11.
51. § 278(b) (emphasis added).
52. § 286. *Compare* § 278(c) *with* § 286; § 273 para. 12; *see supra* notes 44, 6.
53. § 286.

D. CHALLENGES, REMEDIES & PENALTIES

A challenge to agency action may be filed in a court of competent jurisdiction[54] "by any person"[55] within thirty (30) days from the date of an open meeting. If the meeting was closed, then a challenge must be filed within thirty (30) days after discovery of the action taken at the meeting, provided that the challenge is commenced within one (1) year after that meeting.[56] Any party commencing a challenge in bad faith may be liable for attorney fees.[57]

If a court determines that a meeting was in violation of the Act, then it has discretion to invalidate any action taken by the agency at that meeting.[58] In addition, a penalty of up to $100 may be imposed upon any agency member who "participates in a meeting with the intent and purpose . . . of violating [the Act] . . .."[59]

It is somewhat problematic that the test for determining whether a violation has occurred is based upon the purpose of the "discussion";[60] however, the test for determining whether challenges, remedies and penalties are available is based upon an improper "meeting."[61] Because "meeting" is defined in the Act as a "prearranged gathering," the effect of a "coincidental gathering" is unclear.[62]

For example, if a quorum of agency members *by chance* visit the same social club, and if they discuss agency business, then they probably will have *violated* the Act. However, because the gathering was not *prearranged*, it was not a "meeting"; and thus, challenges, remedies and penalties may not be

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54. § 285; *see generally Scott*, supra note 5, 19 Pa. Commw. at 482, 339 A.2d at 598-9 (Commonwealth Court jurisdiction based upon a state agency); *Property Owners v. Pleasant Valley Sch. Dist.*, 100 Pa. Commw. 513, 520-1, 515 A.2d 85, 89 (1986) (DCA has no jurisdiction regarding Sunshine Law); *Paterra v. Charleroi Area Sch. Dist.*, 22 Pa. Commw. 451, 453, 349 A.2d 813, 815 (1976) (school directors as necessary parties).
55. *Lower Saucon Tp. v. Election Bd.*, 27 Pa. D. & C.3d 387, 391-2 (1983) (standing without evidence of prejudice); *Myers v. Bushkill Swr. Auth.*, 24 Pa. D. & C.3d 573, 578-84 (1982) (taxpayer standing); *Vartan v. Mt. Joy Bur. Auth.*, 10 Pa. D. & C.3d 243 (1978) (causation).
56. § 283.
57. *Id.*
58. *Id.; see generally Consumers Ed. & Protective Ass'n, supra* note 5, 470 Pa. at 386, 368 A.2d at 638 (effectuate legislative intent).
59. § 284; *see In re Avanzato*, 44 Pa. Commw. 77, 82, 403 A.2d 198, 201 (1979) (no bad faith when agency relied upon prior law).
60. §§ 274, 273 paras. 7, 4, 2; *see supra* note 10 and accompanying text.
61. §§ 283, 284.
62. *See* § 273 para. 11.

available.[63] The Act supports this strict view by providing that words shall be interpreted as defined in the Act, "unless the context clearly indicates otherwise."[64] Of course, a court may hold that a "meeting" is prearranged at the moment agency members become conscious that a discussion of agency business will occur.

With specific regard to the penalty provision, an agency member's intent to violate the Sunshine Act must be distinguished from an intent to do the thing which violates the Act. For example, if agency members discuss agency business in violation of the Act, they intend to do the thing which violates the Act — namely, to discuss business. However, those members may not intend to violate the Act itself. In other words, the plain meaning of the Sunshine Act indicates that ignorance of the Act may be an excuse from a penalty. Whether this good faith type of approach is practical or consistent with the purpose of the Act is unclear.

E. CONCLUSION

The enactment of the Sunshine Act unequivocally demonstrates the legislature's intent to inspire public confidence in the democratic process by providing greater public access to information.

However, there are more than a few ambiguities in the Act itself, and there are obvious practical difficulties with proving alleged violations. Thus, the state legislature should revise the Act to clarify the ambiguities. Furthermore, because the state legislature's intent is clear, courts should review agency actions with the perspective that whenever such actions are not clearly controlled by the Act, then there should be a rebuttable presumption in favor of the plaintiff. In other words, "politician beware."

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63. *See* §§ 283, 284, 273 para. 11.
64. § 273 para. 1.