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AN EXTENSION OF THE PUBLIC MEETING PRINCIPLE

The public has no common law right to attend meetings of governmental bodies. What has been described as a campaign by the press, assisted on occasion by various civic groups and based on the proposition that secret meetings are detrimental to the democratic process, that intelligent evaluation of the operation of any policy body requires that the premises on which its decisions are founded be made public, has led most of the states to enact some form of open meeting statute. In 1967 the Illinois General Assembly greatly expanded the provisions of the Meetings of Public Agencies Act. The Act in its present form has yet to be interpreted by the courts of Illinois. The purpose of this comment is to inquire into the objectives of the Public Meetings Act, the nature of the gatherings or sessions to which the legislature intended the Act to apply, the requirements for public notice set forth, and the remedies and penalties available for enforcement.

OBJECTIVES AND APPLICATION

The Public Meetings Act begins with a statement of public policy that “the public commissions, committees, boards and councils and the other public agencies in this State exist to aid in the conduct of the people's business. It is the intent of this Act that their actions be taken openly and that their deliberations be conducted openly.” The Act applies to:

All meetings of any legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue . . . .

The statute provides that these meetings “shall be public meetings.”

Prior to the 1967 amendments the language of the Act may well have been said to be “unequivocal and no guidelines . . . could make for more clarity than already exists.” Old section 41 stated the legislative intent to be that “ac-

1 Cross, The People's Right to Know 180-82 (1953).
3 Comment, Access to Governmental Information in California, 54 Calif. L. Rev. 1651 (1965).
4 For a discussion of the various statutes see supra note 2.
5 Ill. Rev. Stat. ch. 102, § 41-44 (1969), [hereinafter cited as the Public Meetings Act].
6 Id. § 41.
7 Id. § 42.
8 Id. This section has been titled, “All official meetings open to the public—Exceptions.” The word “official” is misleading and it should be noted that House Bill No. 476, the primary source of the legislation, did not give titles to any of the sections.
tions (of covered bodies shall) be taken openly and . . . official deliberations [shall] be conducted openly.”

(Emphasis added.) Old Section 42 required that “All official meetings at which any legal action is taken by the governing bodies . . . shall be public meetings . . .”

(Emphasis added.)

A comparison of the old and the new reveals that the Public Meetings Act has been extended to encompass gatherings not previously covered. Discussion required to be held openly is no longer limited to official deliberation, nor are the meetings ordered to be public limited to official sessions at which legal action is taken by the governing bodies. If public knowledge of the considerations upon which governmental action is based is essential to the democratic process, then the newly amended Public Meetings Act is apparently a step forward in accomplishing the purpose of keeping the people apprised of the activities of their representatives and the reasoning behind their official actions. The old Act was seemingly capable of being evaded “through unannounced ‘sneak’ meetings and through indulgence in euphemisms such as executive session, conference, caucus, study or work session, and meeting of the committee of the whole.”

An informal conference at which secret discussion is held and decision made just short of formal acceptance is hardly in keeping with a policy of informing the public of the premises upon which governmental action is based.

However laudable the new statute may be, its language presents some ambiguities which are difficult to resolve. The first two sections of the Act construed together show that meetings required to be public are assemblies where there is action taken or deliberation. Although meetings where action is taken clearly connotes voting on a measure, its companion, meetings where deliberation is conducted, is, on its face, very vague, and any judicial interpretation will most likely revolve around this phrase. One writer has aptly described the issue:

There is a spectrum of gatherings . . . that can be called a meeting, ranging from formal convocations to transact business to chance encounters where business is discussed. However, neither of these two extremes is an acceptable definition of the statutory word “meeting”. Requiring all discussions between members to be open and public would preclude normal living and working by officials. On the other hand, permitting secrecy unless there is a formal convocation of a body invites evasion. In formulating a definition of “meeting” the public’s need for access to information must be balanced against the official’s

(1967). (Question of whether a decision reached in secret was void was not decided because it became moot).

10 Ch. 102, § 1, [1965] Ill. Laws 2643.

11 Id. § 2.

12 Supra note 2, at 1200. See also for a critique of the open meeting principle.


14 California’s Ralph M. Brown Act, Cal. Gov’t Code § 54950-60 defines “action taken” (§ 54952.6) as a:

. . . collective decision made by a majority . . . a collective commitment or promise by a majority . . . to make a positive or negative decision, or an actual vote by a majority . . . upon a motion, proposal, resolution, order or ordinance.
need to act in an administratively feasible manner. Public officials must be able to become acquainted with community problems in depth, to test ideas without becoming publicly committed to them, and to feel out opposition and begin compromise. The problem of the courts, legislative and executive departments is to find a definition of "meeting" that can accommodate officials and still protect the public's access to information.\(^\text{15}\)

The Illinois Public Meetings Act provides for punishment by fine or imprisonment for any person violating the provisions of the Act.\(^\text{16}\) This, in itself, is a compelling reason for clarification as to what constitutes a violation of the Act, or stated differently, when a gathering of the members of the governmental bodies becomes a "meeting" within the meaning of the Act.

A consideration of California's Ralph M. Brown Act\(^\text{17}\) is appropriate at this point. The Brown Act's statement of legislative intent has a familiar ring:

In enacting this chapter, the legislature finds and declares that the public commissions, boards and councils and the other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.\(^\text{18}\)

The Brown Act directs that all meetings of covered governmental bodies "shall be open and public."\(^\text{19}\)

Prior to 1967, Adler v. City Council of Culver City\(^\text{20}\) was the only California appellate opinion to define "meeting" as used in the Brown Act. It held that statute applicable only to formal meetings for the transaction of official business and inapplicable to informal sessions. A 1967 California decision, Sacramento Newspaper Guild v. Sacramento County Board of Supervisors,\(^\text{21}\) held that the Brown Act was not intended to be of such limited application. The court reasoned, "Recognition of deliberation and action as dual components of the collective decision-making process brings awareness that the meeting concept cannot be split off, but rather comprehends both or either."\(^\text{22}\) Thus, action-taking and deliberation are "functionally discernible steps, both of which must be taken in public view."\(^\text{23}\) As for the slippery word "deliberation," the court found that it "con-

\(^{15}\) Supra note 3, at 1651.
\(^{16}\) Ill. Rev. Stat. ch. 102, § 44 (1969). The Brown Act focuses the criminal penalty only on the meeting where action is taken, not on the meeting confined to deliberation. This is a recognition that public officials can sometimes guess wrong when confronted with an ambiguous situation (§ 54959).
\(^{17}\) Cal. Gov't Code § 54950-60.
\(^{18}\) Id. § 54950.
\(^{19}\) Id. § 54953.
\(^{21}\) 263 Cal. App. 2d 41, 69 Cal. Rptr. 480 (1967). (Luncheon gathering of all five county supervisors to discuss a strike against the county and the county's efforts to enforce an injunction secured in connection with the strike).
\(^{22}\) Id. at 47, 69 Cal. Rptr. at 485.
\(^{23}\) Id. at 48, 69 Cal. Rptr. at 485.
notes not only collective discussion, but the collective acquisition and exchange of facts preliminary to the ultimate decision."\textsuperscript{24} The court, later in the opinion, defined "meeting" as used in the Brown Act:

There is rarely purpose to a nonpublic pre-meeting conference except to conduct some part of the decisional process behind closed doors. Only by embracing the collective inquiry and discussion stages, as well as the ultimate step of official action, can an open meeting regulation frustrate . . . evasive devices. As operative criteria, formality and informality are alien to the law's design, exposing it to the very evasions it was designed to prevent. Construed in the light of the Brown Act's objectives, the term "meeting" extends to informal sessions or conferences of the board members designed for the discussion of public business.\textsuperscript{25}

The court's interpretation of "meeting" is in line with a policy that promotes public awareness of the considerations behind the decisions of governmental bodies.

The purpose of the Illinois General Assembly, in amending its Act, was not simply to delete redundant words or to phrase an old law in a new way; the legislature obviously intended an extension of the application of the Act to something beyond the formal action-taking concept. A practical limit is, as the California court said, the collective inquiry and discussion stage. This is not to say that a social occasion where members of a body may happen to be present is a meeting: "The difference between a social occasion and one arranged for pursuit of the public's business will usually be quite apparent."\textsuperscript{26} The new Public Meetings Act apparently commands that gatherings arranged for the pursuit of the public's business must be public, regardless of whether any official action is scheduled to be taken. Such an interpretation insures greater community evaluation and participation in the process of government and more conscientious effort on the part of their representatives to air their views on all issues.

**Exceptions**

Naturally, some matters occasionally come before various governmental bodies which must be free from immediate public scrutiny because of sensitivity, possible embarrassment to some individual persons or the possibility that the purpose of the particular inquiry could be defeated by public exposure. The Illinois Public Meetings Act recognizes this.\textsuperscript{27} "Governmental employees should not be put in a more public position than employees of private organizations when their personal attributes are being discussed."\textsuperscript{28} Similarly, "When possible disciplinary action or dismissal is being considered, premature publicity can cause great and

\textsuperscript{24} \textit{Id.} at 47, 69 Cal. Rptr. at 485.
\textsuperscript{25} \textit{Id.} at 50, 69 Cal. Rptr. at 487.
\textsuperscript{26} \textit{Id.} at 50, 69 Cal. Rptr. at 487, n. 8.
\textsuperscript{27} Ill. Rev. Stat. ch. 102, § 42 (1969).
\textsuperscript{28} \textit{Supra} note 3, at 1657.
often unjustified damage to personal reputations.\textsuperscript{29} Obviously, some bodies, such as parole boards, juries, crime investigating boards, commerce commissions, youth commissions and school disciplinary boards must because of their very nature deliberate in secret. The Act recognizes that governmental units have an attorney-client privilege.\textsuperscript{30} The Act protects against land speculation at the public’s expense and removes temptation from possible double dealing officials by providing that meetings to consider the purchase of, but not meetings to acquire real property may be secret. In a rather “Do as I say and not as I do” provision, the General Assembly exempts itself from the operation of the statute. The Act also recognizes, not startlingly, that it can be overruled by the Illinois Constitution or Federal regulation.

**Notice**

An unannounced meeting behind an unlocked door is obviously not within the spirit of the Public Meetings Act. Implicit in the words “public meeting” is not only access to, but knowledge of, the times and places of the meetings required by the Act to be open. To this end sections were added to the Act in 1967\textsuperscript{31} giving precise instructions as to the form and method of giving notice to the public.

The Act requires that all covered bodies give annual notice of their schedule of regular meetings, and a day’s notice of any special, rescheduled or reconvened meeting.\textsuperscript{32} Public notice is given by posting a copy of the notice at the body’s principal office, or if none exists, at the site of the meeting and by supplying copies to local news media who have filed an annual request for such notice. These media shall also be given the same notice of a special, rescheduled or reconvened meeting in the same manner as is given members of the public body, if a local address has been provided.

In addition, each public body subject to the statute must, at the beginning of each year, make available a schedule of all its regular meetings and give ten days’ notice of any change in the regulation by publication, posting and supplying copies of the change to any news media who have filed an annual request. The notice requirements are in addition to, and not in substitution of, any other notice required by law.

\textsuperscript{29} Supra note 2, at 1208.

\textsuperscript{30} Ill. Rev. Stat. ch. 102, § 42 (1969). (In the Sacramento case plaintiffs sought to enjoin future secret meetings of the county supervisors and county counsel. The court upheld an attorney-client privilege, although it affirmed a preliminary injunction restraining all other closed meetings. The Brown Act, unlike the Illinois Act, does not expressly allow governmental bodies to meet in closed session to discuss pending lawsuits).

\textsuperscript{31} Id. § 42.01-.04 (1969).

\textsuperscript{32} Id. § 42.02.

However, this requirement of public notice of reconvened meetings does not apply to any case where the meeting is to be reconvened within 24 hours nor to any case where announcement of the time and place of the reconvened meeting was made at the original meeting and there is no change in the agenda.
ENFORCEMENT

Perhaps the most practical remedy when dealing with a violation of the Public Meetings Act, in the case where official decision has been made at a secret meeting, is invalidation of the action taken. The statute does not expressly provide this remedy as it does the remedy of mandamus and the penalty of fine or imprisonment. However, there is evidence, implicit in the statute and in case law, that the statutory remedies were not meant to be exclusive. The Act provides that "[f]ailure . . . to receive notice . . . shall not invalidate any meeting provided notice was in fact given . . . ." (Emphasis added.) These words are strong evidence of an intent by the legislature that a meeting held when notice was not in fact given, and consequently not public, shall be invalid.

The only Illinois court to consider the question held, on the one hand, that action taken at a casual and unauthorized meeting was invalid, but went on to allow the secretly made decision to be validated by vote in a formal and open session. This case was decided prior to the 1967 amendments which extended coverage of the Act to informal meetings where deliberation is conducted and it brings to the fore a problem in light of the new Act: Shall open meetings where action is taken be invalidated because deliberation was held in a secret meeting? It has been suggested that it is unlikely that the courts will go this far. An opposing view is that public ratification of a secret decision could be used to circumvent the policy of open meeting statutes. Deliberations conducted and action taken at a closed session are equally violative of the Act. If there is reason to invalidate action taken in secret, then there is equal reason to invalidate an open adoption of decisions reached in closed session.

Prior to 1967, the courts were authorized to issue writs of mandamus when the provisions of the Act were not met. Granting of this relief was made discretionary. This provision has been strengthened by requiring the courts to issue the writ "[w]here the provisions of [the] Act are not complied with, or where there is probable cause to believe that the provisions of [the] Act will not be complied with . . . ." Other appropriate relief, presumably injunction, is authorized. The practical difficulty with the remedy of mandamus is proving that a violation is about to occur, but the remedy is useful as a means of prodding inadvertent, but well-meaning members of a governmental body into compliance without making criminals of them.

84 Id. § 44.
85 Id. § 42.04.
It is doubtful that the authorized criminal penalties will be imposed short of flagrant and repeated violation of the Act. However, officials are not likely to ignore the possibility of fine or jail sentence; thus, the provision adds the necessary "teeth" to the statute.

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