

From: <tim.allwein@psba.org>
To: <jsedesse@pahousegop.com>
Date: 12/5/01 9:14AM
Subject: Comments on Public Notices

Judy

Attached please find a copy of written comments that PSBA would like to submit on the issue of Public Notices. Please keep me informed of any further public hearings, committee meetings or informational sessions the committee may have on this issue. Thank you.

Tim Allwein
Acting Assistant Executive Director for Governmental and Member Relations
(See attached file: Public Notice memo.doc)
Pennsylvania School Boards Association
774 Limekiln Rd.
New Cumberland, PA 17070-2398
tim.allwein@psba.org
(717) 774-2331 ext. 3325
Fx: (717) 774-0718
Visit our Website at <http://www.psba.org/>

Consistent with the House Judiciary Committee request for information regarding “current practices and costs associated with the publication of legal notices,” please find below some issues that the Pennsylvania School Boards Association would like to bring to the attention of the Committee.

1. Requiring non-school board committees to publicly advertise their meetings in compliance with the Sunshine Act.

While its well understood that the governing boards and board committees of school districts, vocational-technical schools and intermediate units must publicly advertise their meetings in a manner prescribed by the Sunshine Act, recent judicial decisions have expanded that requirement to non-school board committees working in close relationship with public school entities.

For example, in Patriot News Company v. Empowerment Team of Harrisburg School District, 763 A.2d 539 (Pa. Commw. Ct. 2000), the Commonwealth Court held that a school district’s empowerment team, created as mandated by Act 16 of 2000, was required to meet publicly and advertise its meetings in a manner consistent with the Sunshine Act. The court reached that conclusion based upon its finding that the empowerment team was acting a “*de facto* school board,” *id.* at 546, notwithstanding the facts that the team was required to hold at least one public hearing and its recommendations had to be approved by the elected school board and the Department of Education. *See, 24 P.S. § 17-1703-B(f)-(h)*. Since that decision, at least one court of commons pleas has cited Patriot News Company with approval to conclude meetings of interscholastic athletic leagues must be advertised and open its meetings to the public. Hacker, et al. v. Colonial League, et al. No. 2001-E-0050 (Lehigh Co. C.C.P. Oct. 11, 2001)(athletic league’s cheerleading regulations voided because they were not approved at a Sunshine meeting).

The net effect of these decisions is to cast doubt whether other non-school board committees, which serve the interest of public school entities, may meet without having to comply with the Sunshine Act. For example, state law currently requires public school entities to create committees of non-school board directors for various purposes without any express legislative guidance whether the Sunshine Act applies to their respective meetings:

- 1 Development of professional education plans for public school entities, *24 P.S. § 12-1205.1(b)*.
2. Development of strategic plans for public school districts, *22 Pa. Code §§ 4.13, 4.81*.
3. Development of improvement plans for school districts placed on the empowerment list pursuant to Act 16 of 2000, *24 P.S. § 17-1703-B(f)-(h)*.

While in many instances, such a requirement may seem to serve the public well it also makes the scheduling of such required meetings more cumbersome and expensive since otherwise *ad hoc* groups would have to engage in extensive pre-planning to schedule

meetings, advertise them, set formal agendas, etc. as opposed to meetings at the end of a school day when convenient to do so.

Likewise, many public school entities have community-based organizations - parent-teacher organizations, parent advisory groups, booster clubs, and others – which tackle school-related issues at private meetings. While school boards do not typically delegate any of their responsibilities to these groups, sometimes they play a significant role in spearheading efforts to increase expenditures on library books, playground equipment, athletic facilities, through fundraising and donations, which could have a residual impact on the overall financial plan of a school entity. Depending upon the success or influence of these types of organizations could it be argued that the Patriot News Company case applies here as well?

With these concerns in mind, PSBA would suggest the following for the Committee's consideration:

1. Consider amendments to the definition of the term “agency” as set forth in the Sunshine Act to clarify whether the General Assembly accepts or repudiates the holding in Patriot News Company to the extent it applies to committees comprised of non-elected officials which are required to report to an elected or appointed agencies.
 2. Whenever the General Assembly adopts legislation requiring public school entities to establish “committees” to develop plans, policies, etc. specifically delineate whether the Sunshine Act applies to their proceedings.
- 2. Requiring school districts to exceed the provisions of the Sunshine Act when engaging in certain policymaking decisions.**

Prior to the adoption of the original Sunshine Act in 1974, the Public School Code of 1949 (as amended), *24 P.S. § 1-101 et seq.*, contained numerous provisions whereby school districts were required to provide the public with prior legal notice of certain policymaking activities. In many instances, these provisions required (and continue to require) school districts to provide the public with advance notice of certain contemplated actions over and above what the current Sunshine Act would otherwise require if these issues were deemed to be “routine” agenda items.

While in many cases, there are compelling policy reasons for such advance notice, PSBA thought the Committee would be interested in knowing some of the unique notice rules applicable to school districts. We would urge the committee to examine these requirements in light of the Sunshine Act and determine if they are still needed in the School Code or if the notice requirements of the Sunshine Act are sufficient and to make the appropriate recommendation. Some of these legal notice provisions include:

1. Closing of schools – under Section 780 of the Public School Code a district must hold a publicly-advertised hearing at less than 90 days before a school board can vote whether to school. *24 P.S. § 7-780*. Thereafter, the district must provide affected teachers 60 days written notice of that decision or risk paying them for up to one school year after their layoff from employment. *24 P.S. § 5-524*.
2. School Construction – under Section 701.1 of the Public School Code a district must hold a public hearing, advertised at least 20 days in advance, when it seeks to incur indebtedness to finance a school construction project (in lieu of a public referendum). *24 P.S. § 7-701.1*.
3. Annual Budget – under Section 687 of the Public School Code a district must make a copy of its preliminary budget available for public inspection at least 20 days prior to the date set for the adoption of the budget. *24 P.S. § 6-687*.
4. Private Sale of Unnecessary School Property – under Section 707 of the Public School Code a district must publicly advertise the sale of school district-owned property by public auction or private sale once a week for three successive weeks. *24 P.S. § 7-707*
5. Purchase of Supplies through Competitive Bidding – under Section 807.1 of the Public School Code a district must publicly advertise its solicitation for bids once a week for 3 weeks in 2 newspapers of general circulation. *24 P.S. § 8-807.1*.

Thank you for the opportunity to comment on this issue.