

September 16, 2014
Lancaster Newspapers, Inc.
HB 2408 – Sunshine Act Testimony

Good morning. Thank you for allowing me the opportunity to appear and offer testimony before the House State Government Committee on House Bill 2408.

My name is Jed Kensinger, and I am a 25-year newsroom employee of Lancaster Newspapers in Lancaster County, where I coordinate the work of about 120 freelance correspondents, many of whom report on school district and municipal meetings.

Local news correspondents frequently share with me their difficulties gaining access to the most rudimentary information at public meetings, and I have also attended many of these meetings. Much to my dismay, I have seen officials run roughshod over the citizens who elected them to conduct the public's business. In some cases, free exchange of information between citizens and their government simply does not exist.

Imagine how difficult it would be for citizens and news reporters to understand issues that elected officials discuss and/or take action on during a public meeting without an agenda? Or an agenda with too little public notice and is available for the first time when you arrive at the meeting? Or perhaps one that is so cryptic it contains little more than "Pledge of Allegiance," "Old Business," "New Business" and "Public Comments"?

I've seen these unfocused meetings run until midnight as public officials digress from the job of doing the people's business. They speak in hushed tones with no sound systems and allow for public comment only after people are exhausted and everyone just wants to go home to bed. The agencies offer no documents to help residents understand what their elected officials are doing. Public notice of future meetings merely states they will be held "as needed."

Such blatant disregard for open and honest government really happens at some agencies across the Commonwealth of Pennsylvania, which is why we need a stronger open meetings law. Officials in some places spend hundreds of thousands of taxpayer dollars unbeknownst to those in the audience. It happens partly because agencies lack detailed meeting agendas and supporting records that hold both citizens and public officials accountable. Pennsylvania citizens have been left in the dark for too long, and it's time for a little more Sunshine, which House Bill 2408 provides.

Take for example, East Earl Township, Lancaster County, with a population of 6,507 residents, according to the 2010 census. There are currently plans to replace a \$1.2 million bridge, with funds mostly from the federal government, which is a reason citizens outside of East Earl have a vested interest. The bridge is on a lightly-traveled road that carries about 15 vehicles per day. Although the bridge project has been on the books for more than a decade and would take four residents' properties by eminent domain, East Earl residents had no idea the bridge project was underway until recently. Why? Part of the problem is that there was little information available at public meetings because

cryptic agendas were used, and those cryptic agendas were not available until the start of the meeting.

On at least one of East Earl's meeting agendas, a land development plan appeared as "East Earl LLC" with no other details, so residents did not understand the scope of the project. In fact, the East Earl project allowed for 350 homes, stores and restaurants and infrastructure such as a private water system to be turned over to the township. There was a public hearing, but by the time residents learned of the project during the hearing, it was too late to adequately scrutinize plans and hold their officials accountable for addressing the impacts on the community because the process was so far along.

A few months later, East Earl officials called a meeting on 24 hours' notice "to meet with East Earl LLC to discuss their proposed development." The problem was that when the public showed up for the weekday morning meeting, residents were locked out of the process. A resident asserted there was no meeting agenda available. Officials retreated to an executive session behind closed doors to meet with the developer's lawyer who threatened to sue the township. While there is a litigation exception to the Sunshine Act, it exists to preserve the information and trial strategy from the litigating party, not from the public. The East Earl township solicitor later admitted in a published letter to the editor that the executive session was improper.

Pressure from a citizens group and the reporting by Lancaster Newspapers seems to have changed the way East Earl conducts the public's business. Now at some of its meetings, East Earl provides the public with agendas and board packets, which are detailed records that support the agenda. Board packets are records elected officials have during the meeting. And now the public and news media can follow along.

In the past, supervisors held meetings at 7 a.m. the Thursday after the first Tuesday on an "as-needed" basis. East Earl's neighbor, Earl Township, also used the vague language "every Thursday at 7 a.m. as needed" in its public notices of meetings until Lancaster Newspapers challenged them. The "as needed" language left residents wondering whether a meeting would actually occur, which it did not on many occasions. Earl Township refers to its morning meetings as work sessions.

I'd like to share my observations about meetings that some officials call work sessions. A so-called work session must meet the open meetings requirement under the Sunshine Act because a quorum of officials discusses and sometimes takes action on agency business. They frequently don't use meeting agendas and don't follow accepted meeting protocol such as Robert's Rules of Order. I've also observed that a large number of agencies never prepare agendas for planning commission meetings and other committees that fall under the main governing board. Most of Lancaster County's agencies maintain websites, yet many still do not post agendas on their websites. Meeting agendas at some agencies are not available until the start of the meeting, so people have no way to know whether an issue is of interest to them unless they attend.

House Bill 2408 remedies many of the problems stated above. I look forward to the remedy of the public notice of meetings requirement, as amended under Section 709 (a) that states: "For each regular meeting subsequent to the first regular meeting, the agency shall give additional public notice at least 24 hours in advance of the time of the convening meeting." I'm asking the State Government Committee to bring clarity as to whether the 24 hours' notice requirement applies not only to the meeting notice but also to the requirements for posting the agenda.

I like the amendment requiring agencies to provide advance public notice of the agenda, as these measures would help residents know prior to a meeting what their officials are planning to do with their elected positions and how they are planning to spend taxpayers' money.

Finally, I am especially interested in the amendment requiring "a listing of each matter of agency business that will be or may be the subject of deliberation or official action at the meeting." The specificity of meeting agenda topics is important in remedying a cryptic agenda that mentions merely standby terms such as "Old Business" and "New Business."

However, the remedy doesn't go far enough. The Sunshine Act is silent on the openness of board packets at a public meeting. Thus, some agencies argue they need not provide the public records that support an agenda during a meeting. Board packet documents are public as soon as they are created, so if officials have them in their hands, why not other residents? In practice, board packets are not available at all agency meetings, although my survey showed a large majority of school districts in Lancaster County do provide board packets at meetings, while about half of the borough councils and about a third of township boards of supervisors also make packets available.

I urge the committee to link the Sunshine Act on this matter to the Right to Know Law, which presumes that records that are presented to a quorum of an agency for deliberation at a public meeting (e.g., board packets), are public, with limited exceptions. As you contemplate the idea of an amendment, I ask: Is a meeting truly open if a quorum of an agency discusses documents that haven't been made available to the public at the time of the meeting? I urge the State Government Committee to address the board packet problem by expressly addressing it in the Sunshine Act. If that cannot be done at the present time, then please consider doing so in the near future because I wouldn't want this issue to stand in the way of passing otherwise good legislation.

I'll conclude by saying Pennsylvania's Sunshine Act is not about protecting journalists' rights; the law is about the rights of all citizens to know what their government is doing and why. Therefore, I support House Bill 2408, which will give citizens greater transparency, and I encourage you to work with the public to bring further positive changes for the good of all.

Thank you for your time and consideration.