

Testimony for Joint House & Senate Local Government Committees Public Hearing:
Positives Experienced for Local Government Entities During COVID-19 Pandemic

Monday, September 13, 2021

10:00 AM

Room 140

Main Capitol

Permanent Rules Needed for Local Government Virtual Meetings

By Scott Bomboy, Public Safety Chairman, Perkasio Borough Council

On behalf of the Pennsylvania State Association of Boroughs and Perkasio Borough in Bucks County, I want to thank the joint Local Government committee for the chance to appear this morning. The PSAB reached out to me after the Doylestown *Intelligencer* and the USA Today network published my editorial in July for about citizens wanting online access to local government meetings. I've included a copy of that editorial for your reference.

I'd like to share some positive information about that experience but ask for your help in two important areas that can keep this process growing, while respecting our citizens' constitutional rights.

In Perkasio, we saw a notable increase in video views for our live and recorded Zoom and YouTube meetings during COVID-19 compared with in-person meetings held at borough hall before the pandemic. We used Zoom for public meetings between March 2020 and April 2021.

In my editorial, I wrote that "Neighboring towns probably saw the same increase" in online usage. In retrospect, I was wrong. After looking at 49 other local government agencies in Bucks County and a few next to us in Montgomery County, the numbers show a big change in citizen interest in local government meetings.

Of the 50 local governments and school boards in our region, only 46 percent livestreamed their regular meetings before March 2020. After state lawmakers passed temporary rules about online meetings to supplement the Sunshine Act, that number nearly doubled, with 84 percent of government agencies using Zoom or other technologies during the state of emergency.

After the temporary rules expired in June 2021, 68 percent of local governments in our area are still livestreaming meetings and 70 percent now publish meeting recordings on their websites. And these meetings are popular. In late August 2021 as school boards debated public safety and curriculum questions, Council Rock school district had more than 13,000 YouTube views on one video, while Pennsbury had 11,000 viewers, and in my school district, Pennridge, had about 5,000 views.

The statewide experiment had its rough spots, especially when a livestream had technical difficulties. In one case, a commonwealth judge ruled the Scranton School District violated the Sunshine Act when its YouTube broadcast didn't work and the livestream was moved to Facebook. In a prior public notice, the district only told residents the live video was available on YouTube.

That said, those livestreaming guidelines expired when Pennsylvania's state of emergency ended. With the rules gone, local governments providing live or recorded video to residents now must rely on outdated laws or make up rules on the fly — risking a lawsuit.

Online video recordings present a special challenge. In one controversy, the Pennsbury School District edited its published public meeting videos to delete what it considered offensive public comments when speakers challenged the school's diversity policy in a public forum. The district later published the unedited videos with a disclaimer.

On behalf of our residents, I am asking for your help in two areas. First, we need to update the Sunshine Act to make permanent the COVID-19-era temporary rules about online video of public meetings. And we need to amend the Right to Know Law to make it clear local governments that publish recordings should include the full unedited recordings online, unless there is a problem with personal or private information covered under the Right to Know Law.

With these rules in place, local governments can make their own decisions about live or recorded video of their public meetings, even in emergency situations.

Live video meetings also allow more citizens to participate in the democratic process. Unedited video recorded meetings also would benefit the free press and allow for a broader public discussion of issues. And new, affordable technology makes it much easier to broadcast or record government meetings.

With your help, we can make the Sunshine Act's vision from 1988 happen in the digital age. Remember, the act ensures the public's right to "witness the deliberation, policy formulation and decision-making of agencies" - a right that is "vital to the enhancement and proper functioning of the democratic process."

As Supreme Court Justice Louis Brandeis famously wrote in 1913, "Sunlight is said to be the best of disinfectants."

Appendix A: Editorial from the Doylestown Intelligencer, July 2, 2021

Pennsylvania Sunshine Act needs a digital update

<https://www.buckscountycouriertimes.com/story/opinion/2021/07/02/guest-opinion-pennsylvania-sunshine-act-needs-digital-update/7815665002/>

By Scott Bomboy

One of the lessons learned during the COVID-19 era is that more citizens want online access to local government meetings. But the Pennsylvania state law designed to make that happen is badly outdated and needs a digital overhaul.

In Perkasio, where I am a borough council member, we saw a notable increase in video views for our live and recorded Zoom and YouTube meetings during COVID-19 compared with in-person meetings held at borough hall before the pandemic. Neighboring towns probably saw the same increase.

The video meetings were held using temporary rules passed by state lawmakers to supplement the Pennsylvania Sunshine Act of 1998. The Sunshine Act doesn't account for local government meetings that are livestreamed to digital devices.

However, during the pandemic, the temporary rules were simple. Local governments had to post advance notice online including the date, time and technology used for the meeting, and how public could comment "directly through the teleconferencing or videoconferencing system used to hold the meeting, via email and/or via postal mail."

The statewide experiment had its rough spots, especially when a livestream had technical difficulties. In one case, a commonwealth judge ruled the Scranton School District violated the Sunshine Act when its YouTube broadcast didn't work at the start of a meeting and the livestream was moved to Facebook. In a prior public notice, the district only told residents the live video was available on YouTube.

The state Office of Open Records also issued advisory guidance about the recorded video of virtual local government meetings, with a strong recommendation that "any agency holding a remote meeting record the meeting and proactively make the recording available (preferably online) so that a full and complete record of the meeting is easily accessible by the public."

That said, those guidelines expired when Pennsylvania's state of emergency ended. With the rules gone, local governments providing live or recorded video to residents now must rely on outdated laws or make up rules on the fly — risking a lawsuit.

Online video recordings present a special challenge. In a current controversy, the Pennsbury School District reportedly edited some of its published public meeting videos to delete what it considered offensive public comments.

Is that allowed under the Sunshine Act or the Right to Know Law? Or are those edits unconstitutional since citizen commenters have First Amendment rights that protect free speech in a public meeting?

The best solution is for state lawmakers to update the Sunshine Act and Right to Know Law to make the COVID-19-era temporary rules permanent. And local governments posting meeting recordings should include the full unedited recordings online.

With these rules in place, local governments can make their own decisions about live or recorded video of their public meetings, even in emergency situations. To be sure, there is a good argument for local government meetings to remain in person, since direct interactions between officials and residents can help both parties understand problems better.

In Perkasio, we have about 8,700 residents in our 2.5 square-mile borough so physical attendance at meetings is realistic.

However, live video meetings allow more citizens to participate in the process, especially those who face physical barriers attending in-person meetings, increasing civic engagement. And unedited video recorded meetings also would benefit the free press and allow for a broader public discussion of issues.

The Sunshine Act ensures residents and taxpayers have a voice on “matters of concern” at local government meetings. But without a revised act, these governments are stuck in limbo when it comes to live or recorded video. It is in everyone’s best interest to update the Sunshine Act for the digital age.

Appendix B: Regional Use of Livestreaming Video in Bucks County Region

Note: The research group of 50 local government agencies includes Bucks County municipalities with more than 2,000 residents, larger Bucks County school boards, and some Montgomery County agencies close to Perkasie Borough.

Total agencies: 50

Livestreaming Meetings before COVID: 23

Livestreaming Meetings during emergency period: 42

Livestreaming Meetings today: 34

Agencies Publishing Video Recordings: 35

Local Government Agency	Population	Livestreaming	Archived Video	Most Viewed Video	Date Started	Platform
Bedminster Township	7,541	No	No			
Bensalem Township	62,707	Yes	Yes	434	2012	YouTube
Bristol Borough	9,861	No	Yes	1,600	2009	YouTube
Bristol Township	54,291	CATV	Yes	559	2020	YouTube
Buckingham Township	20,851	During Emergency	No			
Centennial School District		Yes	Yes	2,300	2018	YouTube
Central Bucks School District		Audio	No			
Chalfont Borough	4,253	During Emergency	Yes	79	2020	YouTube
Council Rock School District		Yes	Yes	13,310	2014	
Doylestown Borough	8,300	Yes	No			
Doylestown Township	17,971	Yes	Yes	111	2020	YouTube
Dublin Borough	2,177	Yes	No			
East Rockhill Township	5,819	No	No			
Hatfield Borough	3,496	Yes	Yes	37	2020	YouTube
Hatfield Township	18,640	Yes	Yes	98	2017	YouTube
Hilltown Township	16,284	No	No			
Lansdale Borough	18,773	Yes	Yes	4,422	2020	CivicsPlus
Lower Makefield Township	33,180	Yes	Yes	2,200	2020	YouTube
Lower Southampton Township	20,599	During Emergency	Yes	166		
Middletown Township	46,040	Yes	Yes	617	2020	YouTube
Milford Township	10,243	No	No			
Montgomery Township	25,862	During Emergency	Yes	52	2020	YouTube
Morrisville Borough	9,809	Yes	Yes	649	2020	YouTube
Neshaminy School District		Yes	Yes	3,700	2017	YouTube
New Britain Borough	2,836	Yes	Yes	61	2016	
New Britain Township	12,327	Yes	No			Zoom
New Hope Borough	2,612	No	No			
New Hope/Solebury S.D.		Yes	Yes			Zoom

Newtown Borough	2,268	Yes	Yes	138	2021	YouTube
Newtown Township	19,895	CATV	Yes		2012	
North Penn School District		Yes	Yes	8,100	2012	YouTube
Northampton Township	39,915	Yes	Yes	342	2020	YouTube
Pennridge School District		Yes	Yes	4,200	2018	YouTube
Pennsbury School District		Yes	Yes	10,987	2020	YouTube
Perkasie Borough	9,120	During Emergency	Yes	188	2020	YouTube
Plumstead Township	14,021	During Emergency	Audio Only			
Quakertown Borough	9,359	No	No			
Quakertown Community S.D.		Yes	Yes	2,900	2019	YouTube
Richland Township	13,837	Yes	Yes	85	2017	UStream
Sellersville Borough	4,527	During Emergency	No			
Solebury Township	8,709	Yes	No			Zoom
Souderton Borough	7,191	Yes	Yes	74		YouTube
Souderton School District		Yes	Yes			CATV/Viebit
Springfield Township	5,175	Yes	No			
Upper Makefield Township	8,857	During Emergency	Yes		2009	Viebit
Warminster Township	33,603	CATV	Yes	406	2020	YouTube
Warrington Township	25,639	Yes	Yes		2013	SwagIT
West Rockhill Township	5,439	Yes	Yes	146	2020	YouTube
Wrightstown School District		Yes	Yes			Viebit
Yardley Borough	2,605	Yes	Yes	276	2020	YouTube