

12/5/21

School Directors,

I'd like to bring to your attention that the board is in violation of the Sunshine Act; specifically 65 Pa.C.S. §§ 708 (b). The board must provide sufficient information for the public to determine if executive sessions are warranted. The board has not done so. This contributes to the board's [non]transparency issues in the eyes of the public.

## Background

The Sunshine Act (65 Pa.C.S. §§ 701-716) allows the board to meet in executive session for various reasons. However, the reason for the executive session must be made public according to 708(b).

**708 (b) Procedure.**--The executive session may be held during an open meeting or 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.*** [emphasis added] If the executive session is not announced for a future specific time, members of the agency shall be notified 24 hours in advance of the time of the convening of the meeting specifying the date, time, location and purpose of the executive session.

Commonwealth Court has elaborated on the needed specificity when a reason is given for an executive session in the well-known Reading Eagle case. *Reading Eagle Co. v. Council*, 156 Pa. Commonwealth Ct. 412 (1993)

The trial court granted declaratory judgment and an injunction,[3] ordering that when announcing executive sessions, City Council ***must spell out in connection with existing litigation the names of the parties, the docket number of the case and the court in which it is filed.*** [emphasis added] In connection with identifiable complaints or threatened litigation, the trial court ordered that City Council must state the nature of the complaint, but not the identity of the complainant.

Commonwealth Court explained why specificity is necessary.

The reason given, of course, must be meaningful. It must be more than some generalized term which in reality tells the public nothing. To simply say "personnel matters" or "litigation" tells nothing. The reason stated must be of sufficient specificity to inform those present that there is, in reality, a specific, discrete matter or area which the board had determined should be discussed in executive session. . . . When a board chairman tells a citizen he may not hear the board discuss certain business, he is taking liberties with the rights of that citizen, and the reason given for this interference must be

genuine and meaningful, and one the citizen can understand. To permit generalized fluff would frustrate the very purpose of the Act.

## Sunshine Act Violations

Two examples are provided below where the board has provided a reason, but one without sufficient specificity in violation of the Sunshine Act. These two examples are characteristic of most and likely all the reasons given for executive session over the last several years.

- 1) At the November 2021 board meeting Mr. Roos gave the following reason (videotape time 1:01:58) for holding an executive session.

“Yes. The board met in executive session tonight regarding the various land use litigation matters pending.”

- 2) At the October 2021 board meeting Mr. Roos gave the follow reasons (videotape time 1:40:05) for holding executive sessions.

“The board met in executive session last Monday evening October 11th to discuss Right to Know litigation. The board met tonight in executive session to discuss a federal court litigation matter and also to discuss a land development matter which was Arnold Field.”

In both examples Mr Roos mentions “litigation” but fails to disclose the names of the parties, the docket number of the cases and the courts in which the cases are filed. For instance, there are two active federal cases in the United States District Court, Eastern District of Pennsylvania. Which one was discussed in the October executive session?

2:20-cv-01416-KSM J.L. et al v. LOWER MERION SCHOOL DISTRICT filed 03/12/20  
2:20-cv-03536-GEKP JACKSON v. LOWER MERION SCHOOL DISTRICT filed 07/16/20

In addition, the board should understand that a “land development matter” is not one of the six valid reasons for an executive session and that discussion should have been held at a regular public board meeting. Please correct the situation and give meaningful reasons for executive sessions so the district is in compliance with the Sunshine Act and the public can determine whether the executive session is legal.

Regards,

Keith Knauss