

OPEN PUBLIC MEETINGS ACT

In 1975, the Legislature adopted what is now known as the Senator Byron M. Baer Open Public Meetings Act. In adopting this statute, nicknamed the “Sunshine Law,” the Legislature declared that the public had the right to be present at all meetings of public bodies and to witness in full detail all phases of the deliberation, policy formation and decision making of public bodies. This Article will deal with the basic rules that must be followed in order to conform to the requirements of the Open Public Meetings Act.

Compliance with the statute starts before your meeting. The Act requires that notice of the meeting be given in advance of the meeting. This can be done in one of two ways. The first would be to adopt a schedule of meetings to be held throughout the year at the annual reorganization meeting of the library board. Within 7 days after that meeting, the board must then post the annual meeting schedule, which would include the date, time and location of each meeting, and keep it posted throughout the year, in a prominent public place reserved for such announcements. Also, the board must mail the meeting schedule to at least two newspapers. Finally, this notice must be filed with the municipal clerk in which the Library is located (or all clerks in the towns served by a joint library). If the meeting schedule is revised, the board must post, mail and submit the revised notice within 7 days following the revision.

The second way to provide notice would be to provide written notice, at least 48 hours in advance of the meeting, of the date, time, location, and, to the extent known, the agenda of any regular, special or rescheduled meeting. The notice must be posted in a public space, mailed to at least two newspapers and filed with the municipal clerk in a similar manner as the annual notice would be. The meeting notice must state that formal action may or may not be taken. While notice can be provided electronically, that is by email and posting on the library web page, electronic notice is not a substitute for the written notice required by the Act.

At the beginning of every board meeting, the presiding officer is required to make an announcement that adequate notice of the meeting required by the Open Public Meetings Act has been provided, specifying the time, place and manner in which such notice was provided.

Although the intent of the Legislature was to provide as much access to meetings of public bodies as possible, not all meetings of members of a public board are subject to the requirements of the Act. The Act specifically provides that it is not applicable to meetings

attended by less than an effective majority of members of the board or when the meeting is open to all the members of three or more similar public bodies at a convention or similar gathering.

The Board can close a portion of its meeting to the public under the exceptions provided in the Act. Specifically, the board of trustees may exclude the public from discussions of such matters as the negotiation of a collective bargaining agreement, pending or anticipated litigation or contract negotiations, any matter involving the purchase, lease or acquisition of real property, the setting of bank rates or the investment of public funds, matters falling within the attorney/client privilege and any personnel matters. It is this last exception which has provoked much litigation.

In the case of Rice v. Union County Regional High School Board of Education, 155 NJ Super 64 (App. Div. 1977), the Appellate Division determined that in order for a public body to be able to close its meeting to the public to discuss personnel matters, employees who would be affected by the board's action must be notified in advance that the board will be discussing the terms and conditions of their employment and advising that the matter will be discussed in private unless the employee requests that the matter be discussed in public. This notice, commonly referred to as a "Rice" notice, is designed to balance the board's obligation to keep personnel matters private while at the same time providing employees the right to request that matters be discussed in public.

In order to exclude the public from a portion of the library board's meeting, the board must first adopt a resolution at the meeting which states the general nature of the subject matter to be discussed in closed session and stating when the discussion which will occur in closed session can be revealed to the public.

While the library board meets in closed session, it may only consider the items covered by the resolution. The Board may not discuss any items that can only be considered in an open meeting; it cannot discuss any items not included in the resolution. While in closed session the board can take no formal action. That is, there can be no motion made to take any action other than a motion to adjourn the executive session. However, the board can take a straw vote to determine the preferences of the board. Matters discussed in closed sessions which require action can only be acted upon in open session. When the board reconvenes in open session, a motion to take action on any of the items discussed in closed session may be made, however, there should be no discussion on those motions.

The board of library trustees, like all public bodies, is required to keep minutes of all meetings including those sessions that are closed to the public. The minutes are required to record the following minimum information: (a) the time and place of the meeting; (b) the names of all members of the body attending the meeting; (c) the subjects considered at the meeting; (d) the actions taken at the meeting; (e) the vote of each member on all items voted upon. Minutes of each meeting are open to public inspection and copying except for those portions of the minutes related to closed sessions. The Act requires that minutes be made promptly available to the public and need not be formally approved by the public body before distribution to the public.

There may be instances in which the board must meet on an emergent basis and cannot give proper notice under the Open Public Meetings Act. If the need arises for the board to meet on an emergent basis, as soon as the meeting is called to order, three quarters of the members present at the meeting must vote to hold the meeting notwithstanding the failure to provide adequate notice. This can be done provided conditions set forth in the statute are met.

In the event a library board fails to comply with the provisions of the Open Public Meetings Act, any action taken by the board at a meeting which does not conform to the Act's requirements is voidable by the Superior Court. Such an action may be brought by any person within 45 days after the action sought to be voided has been made public. The Act does provide that a public body may take corrective or remedial action by acting *de novo* at a public meeting held in conformity with the Act. Further, the Act provides that any person who knowingly violates any provisions may be fined \$100.00 for the first offense and no less than \$100.00 nor more than \$500.00 for a subsequent offense.

While this Article presents an overview of the Act's requirements, consultation with your board attorney is advised to insure that all meetings of the library board conform to the requirements of the Sunshine Law.