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PA SUPREME COURT DECIDES WHEN PUBLIC OFFICIALS CAN MEET PRIVATELY

There are times for public meetings and times for closed-door sessions at schools and government offices - the law allows for each. But a recent Supreme Court of Pennsylvania decision drew the line to make it clearer when even a quorum of public officials - from school board members to municipal officials - could meet privately.

In *Smith v. Township of Richmond*, 82 A.3d 407 (Pa. 2013), at issue was whether township officials could meet privately with members of a citizens group and local cement company Lehigh Cement regarding litigation over the expansion of a quarry. They held four private meetings during March 9-12, 2010 for the purpose of information gathering. They met with representatives of adjacent municipalities with experience in dealing with quarries. They spoke with a citizens group and its attorney to better understand environmental concerns surrounding the quarry. They also met with Lehigh Cement and its attorneys.

Lehigh Cement submitted its proposal to the Township Board 45 minutes before the public board meeting. That evening, the public had ample time to comment on the proposal. The official vote to accept the proposal was made at the conclusion of public discussion. One local resident, however, thought the earlier private meetings had somehow influenced the decision. He sued the township that those sessions violated the Sunshine Act.

The Pennsylvania Sunshine Act allows school boards and other government entities to hold closed executive sessions, providing that they satisfy certain conditions. The conditions usually are laid out with the acronym, CLEAR:

- conferences to gain information
- labor issues
- employment discussions
- attorney consultation, and
- real estate - discussion relating to purchase or lease

But there also is a conference exception, or permissible reasons that don't fall under the CLEAR criteria. If it's necessary to alert board members to developing issues - prior to releasing information to the public and to the media - it is allowable, providing there is no deliberation. There are many examples of situations at schools that might fall under this exception: bullying, financial information, possible sales of real estate, local issues affecting the school community, and so on.

The requirement that there be no deliberation is the key. Deliberation is defined as discussion for the purpose of making a decision. The Supreme Court of Pennsylvania affirmed the Berks County Court and the Pennsylvania Commonwealth Court in their conclusion that the township supervisors did not violate the Sunshine Act, ruling that meetings closed to the public are permissible and discussions that do not include weighing the pros and cons of various options or otherwise lead to a decision by elected officials are permissible.

The decision is noteworthy because it confirms school board members may meet privately to obtain information so long as they refrain from making decisions. The Supreme Court also threw in for good measure

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that the burden is on the challenger to prove a violation. Furthermore, since information gathering does not constitute a meeting under the Sunshine Law, such sessions do not have to be advertised or announced.

The Smith ruling provides much-needed clarification on the difference between discussion and deliberation and the legality of private gatherings by elected officials in Pennsylvania. The ability for public officials to ask questions and make inquiries to gather relevant information to be fully informed on a topic so that deliberations can be meaningful and thorough is paramount to effective governance.

However, keep in mind, the Supreme Court also explicitly disallowed deliberations on topics not otherwise allowable under executive session. Thus, the prudent public official should always err on the side of caution when discussion starts to sound like debate on any topic to be acted upon by the governing body.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.