



July 27, 2012

### **SUPREME COURT SHEDS LIGHT ON THE SUNSHINE LAW**

On July 25, 2012, the New Jersey Supreme Court issued its ruling in *McGovern v. Rutgers, et al.*, Dkt. No. A-113-10. This important decision clarifies, among other things, the manner in which public bodies must conduct their meetings. Previously, the Appellate Division of the Superior Court had held that Rutgers, and by extension all public entities, must first complete the open portion of its meetings before proceeding into executive session. The Appellate Division also ruled that the notice of the meeting was defective, as was the resolution passed by Rutgers when the Board entered executive session. According to the Appellate Division, the notice and resolution did not contain sufficient information to inform the public of the topics to be discussed. In reversing the Appellate Division's decision, the Supreme Court ruled that the Open Public Meetings Act ("OPMA"), also known as the "Sunshine Law," does not require a public entity to complete its public meeting before going into executive session. The Court also found that the resolution to go into executive session, as passed by Rutgers at the meeting, satisfied the OPMA. However, the Court did agree with the Appellate Division that the notice of the meeting was a violation of the OPMA, although the Supreme Court found that there was no remedy to be afforded to the Complainant for that violation.

In September of 2008, the Rutgers Board of Governors called for a special meeting to be held. The published meeting advertisement stated that the Board would "act on a resolution to meet in immediate closed session to discuss matters falling within contract negotiation and attorney-client privilege." At the meeting, the Board opened the meeting, then immediately passed a resolution to hold a closed session "to discuss matters involving contract negotiations for sports marketing, naming rights of athletic facilities and stadium construction; employment of personnel and terms and condition of employment; and pending litigation, investigation and matters falling within the attorney-client privilege with respect to these subjects." The Board then went into executive session for four hours, where it discussed those subjects as well as various policies and rules.

A member of the public believed that the Board violated the OPMA by failing to provide sufficient notice of the executive session and by holding the executive session immediately after opening the public portion of the meeting. After the trial court dismissed his complaint, the Appellate Division reversed, finding that the Board violated the OPMA by failing to sufficiently inform the public of the matters to be discussed in closed session and also by holding the executive session portion of the meeting first. The Appellate Division also ruled that a public entity must conduct all public business first before going into closed session.

The Supreme Court disagreed with the Appellate Division. In a unanimous ruling, the Supreme Court stated that there is no provision in the OPMA which requires a public body to first complete the open portion of its meetings before going into closed session. The Court noted that a public body must be afforded discretion in determining how to proceed through its agenda items. The Supreme Court did indicate that public bodies might wish to consider including on their meeting agendas: (1) the meeting start time; (2) a notation that the meeting will begin with a closed session; and (3) the time at which it was believed that the open session would start, each of which would allow members of the public to structure their schedules appropriately.

The Court also stated that the resolution to go into executive session, as passed by the Board, was adequate and sufficiently advised the public of the general nature of what was to be discussed at the closed session. However, the Court agreed with the Appellate Division that the meeting advertisement was a violation of OPMA, because it was evident at the time the meeting was scheduled that the Board was to discuss topics in addition to those contained in the notice. Thus, the notice did not include the topics to be discussed “to the extent known,” as required by law.

The Court’s ruling in *McGovern* serves a number of purposes. Most importantly, it reinforces the notion that a public body must be able to run its meetings in whichever order it sees fit. Furthermore, the Court’s holding in this case is yet another reminder that public bodies must give adequate notice of each meeting, including the topics to be discussed, to the extent known, as required by the OPMA and that only those topics listed in the law as exempt from public discussion may be brought up in closed session. In light of this decision, public entities should be reminded to include as much detail as possible in their meeting notices and resolutions to go into closed session without compromising the confidentiality of such discussions.

If you have any questions regarding the effect of the Court’s decision on your public entity or on any aspect of OPMA compliance, including, among other things, the law’s requirements concerning meeting notices, resolutions or executive session minutes, please do not hesitate to contact the School/Municipal Law Attorneys at SPSK.

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