

Town Board Meets Behind Closed Doors

By Susan Siegel

When can a Town Board discussion be held behind closed doors?

And why should this be important to you?

It's important only if you want to know:

- what decisions are being made that may affect our health, safety and welfare, or
- how our tax dollars are being spent

If we want to hold our elected officials accountable for their actions, we need to know what they're doing. And we can only know what they're doing if their decisions are being made in the open.

As a regular observer of Town Board meetings, I've become increasingly concerned that the Town Board may not always be complying with all aspects of the state Open Meetings Law. While the law provides Town Boards with some very clear guidelines for when it can go into executive (aka closed) session, it also leaves some gray areas that are open to interpretation -- as well as abuse. I know. I've been on both sides of the closed door. First as a Town Board observer, then as supervisor, and now, back again as an observer.

At this point, you're probably (and legitimately) asking: On what basis do I suspect that the Town Board may not be complying with the Open Meetings Law? After all, if I'm not there to listen to the discussion, how do I know what was discussed?

Here's a two-part answer and why I think this is important enough to bring to the community's collective attention.

The public agendas for closed sessions don't always comply with the law.

A recent memo from the state's Committee on Open Government, copies of which were given to all Town Board members, made it clear that labeling a closed session item as a *personnel matter* or *legal matter* "...is inadequate and fails to comply with law. In short...an executive session should include information sufficient to enable the public to believe that there is a valid basis for closing the doors."

In other words, if the Town Board is interviewing candidates for a particular staff position, or volunteers for an advisory board, the agenda should say what position or which board instead of showing only "personnel" or "volunteer boards." The key word is "particular." If the Board is to comply with the Open Meetings Law, the "particularity" of the topic must be identified.

The Committee on Open Government has also consistently advised public bodies that the "personnel" exception, "was intended largely to protect privacy and not to shield matters of policy under the guise of privacy."

In other words, discussions of whether or not to fill vacant positions are policy decisions, not personnel matters, and do not fall into the "personnel" exception for closed meetings. These types of discussions, and there have been several since January, should be in open session.

The same requirement of "particularity" applies to litigation. If the Board is discussing litigation, the agenda should read: current (or pending) litigation involving X, not simply "litigation."

The Supervisor's public statements.

During two separate Town Board meetings, I asked for updates on two pending issues: the status of a contract with Verizon and a planned department consolidation that was included in the 2012 budget. The Supervisor's responses to my questions made it clear that Board decisions had been made regarding both issues. But neither issue had been discussed at an open meeting, even though neither issue met any of the permitted exemptions for closed sessions set out in the Open Meetings Law. And the Board's decisions on both issues had not been made public prior to my asking for the status update.

The Open Meetings Law permits closed sessions for the following types of discussions:

1. matters that would imperil the public safety if disclosed
2. matters that would disclose the identity of a law enforcement agent or informer
3. information relating to current or future criminal investigations
4. discussions regarding proposed, pending or current litigation
5. collective bargaining negotiations
6. proposed acquisition, sale or lease of real property
7. And the so called "personnel" exception, the exception most open to abuse: the medical, financial, credit or employment history of a *particular* (emphasis added) person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a *particular* (emphasis added) person or corporation.

But because Town Board discussions don't always fit neatly into seven self-contained boxes, sometimes a legitimate closed session discussion may evolve into a discussion that should be held in an open session. This happened when I was Supervisor and I suspect that it likely happens with the new Board. The question then becomes: what happens next? Does the Board continue the discussion behind closed doors or suspend the discussion until a future open meeting?

The Open Meetings Law and the companion Freedom of Information Law give us powerful tools with which to hold our elected officials accountable for their actions. But if we truly value an open and transparent government, we need to be constantly on guard against any infringement of our rights. And we need to let our elected officials know that we expect more than lip service to the words "open and transparent government."

We expect compliance with the Open Meetings Law.

For more information about the Open Meetings Law and Freedom of Information Law, visit

www.yorktownbettergovernment.org/open_government.htm.

###