

MCQUAIDE BLASKO

811 University Drive, State College, Pennsylvania 16801-6699
600 Centerview Drive • M.C. A560 • Suite 5103, Hershey, Pennsylvania 17033-2903

ATTORNEYS AT LAW

814-238-4926 FAX 814-234-5620
717-531-1199 FAX 717-531-1193
www.mcquaideblasko.com

Reply to: State College Office

Direct: 235-2206

June 19, 2002

William B. Devlin, Director of
Human Resources I
The Pennsylvania State University
307 Agricultural Administration Building
University Park PA 16802

**RE: *Fayette County Co-Operative Extension and the Applicability of the
Open Meetings Law***

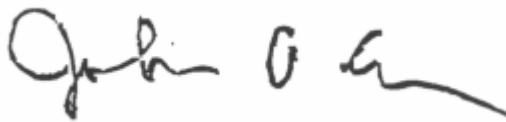
Dear Bill:

Enclosed please find a research memorandum prepared by our summer associate, Haima Varadan, which addresses the questions concerning the Fayette County Extension Office. Her research supports the conclusion that the open meetings law does not apply to the deliberations of the Fayette County Co-Operative Extension Board.

Should you have any comments or questions, please do not hesitate to contact me.

Very truly yours,

MCQUAIDE BLASKO



JOHN A. SNYDER

JAS/sap
Enclosure

MCQUAIDE, BLASKO, SCHWARTZ, FLEMING & FAULKNER, INC.

TO: John Snyder, Esquire
FROM: Haima A. Varadan
IN RE: Application of the Sunshine Law to Penn State’s Cooperative Extension
DATE: June 19, 2002
ISSUE:

Does the Sunshine Law apply to meetings of the Board of Directors of the Cooperative Extension of Fayette County?

DISCUSSION:

Penn State Cooperative Extension is an outreach program/legal entity that provides access to Penn State’s resources and expertise to people living throughout the Commonwealth. The Smith-Lever Act of 1914 created Cooperative Extensions to provide “useful and practical information on subjects relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy, and to encourage the application of the same...in connection with the college or colleges in each State.” 7 U.S.C. § 341. The Boards of each Cooperative Extension in the 67 counties of the Commonwealth were established to enable county Cooperative Extension to receive county appropriate funds. These boards help determine and shape programs based on identification of local agricultural needs. The members of the Board do not have any administrative or operational responsibility.

The Sunshine Act, formerly known as the Right to Know Law of 1957, provides for the “right of the public to be present at all meetings of agencies and to witness the deliberation, policy formulation, and decision-making of agencies,” as the General Assembly found that this right is “vital to the enhancement and proper functioning of the democratic process” and that “secrecy in public democratic affairs undermines the faith of the public in government and the public’s effectiveness in fulfilling its role in a democratic society.” 65 Pa.C.S.A. § 702 et seq. As defined by § 703, an agency is a “body, and all committees thereof, authorized to take official action or render advice on matters of agency business.” 65 Pa C.S.A. § 703. This statute defines official action as “recommendations made by an agency pursuant to statute, ordinance, or executive order; the establishment of policy by an agency; the decisions on agency business made by an agency; or the vote taken by an agency on any motion, proposal, resolution, rule, regulation, ordinance, report, or order. 65 Pa.C.S.A. § 703. Agency business is defined as “the framing, preparation, making, or enactment of laws, policy, or regulations, the creation of liability by contract or otherwise, or the adjudication of rights, duties, and responsibilities.” 65 Pa.C.S.A § 703. Lastly, this statute defines a meeting as any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action. In addition to the language of the statute, some courts have looked to whether the body in question performs an essential government function in order to determine whether the Sunshine Act (or Right to Know Law) should apply. See e.g... Philadelphia Welfare Rights Org. v. Georges, 50 Pa.D. & C.2d 771, 772 (1970).

Thus the primary question to be resolved is whether the Cooperative Extension of Fayette County is an “agency” by determining whether its activities constitute “official action” or a rendering of “advice on agency business.” If it is found to be an agency, the secondary question is whether the action taken by members of the Board of the Cooperative Extension during meetings constitutes a deliberation of “agency business” or a taking of “official action.” 65 Pa.C.S.A. § 703.

As Cooperative Extensions could be viewed as information providers on agricultural matters, actions taken by them are unlikely to be construed as official action. By providing citizens of the Commonwealth access to Penn State’s resources and expertise, the Cooperative Extension are not making recommendations pursuant to statutes, ordinances, or executive orders; they are not establishing policy; they are not making decisions on agency business; and are not taking votes on motions, proposals, resolutions, rules, regulations, ordinances, reports, or orders. 65 Pa.C.S.A § 703. The Cooperative Extensions are also not conducting agency business, as they are not framing, preparing, making, or enacting laws, policy, or regulations in the provision of information. 65 Pa.C.S.A § 703. Furthermore the Boards of the Cooperative Extensions could be analogized to the county assistance board in Philadelphia Welfare, where the court found that meetings of such boards did not have to be open to the public under the Right to Know Law, as they were not created pursuant to a provision that they performed an essential government function. See 50 Pa.D. & C.2d at 772. Likewise, it could be argued that solely as an information provider, the Boards of the Cooperative Extension are not performing essential government functions nor are they created pursuant to a provision that declares their activities to be essential government functions. See id.

In conclusion, the Penn State Cooperative Extensions are not agencies, as they do not take official action or conduct agency business, and thus the meetings of the boards do not need to be open to the public as per the Sunshine Act 65 Pa.C.S.A. § 703.

(Discussion of whether the action taken by members of the board of the Cooperative Extension during meetings constitutes a deliberation of “agency business” or a taking of “official action” omitted, as Cooperative Extensions are not agencies within the definition of 65 PA.C.S.A. § 703.)

HAV

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