Memorandum to Presidents

FOR ACADEMIC POLICY

Date: November 12, 1976

From: Office of the University Counsel and Vice Chancellor for Legal Affairs

Subject: Open Meetings Law

The State of New York has adopted an Open Meetings Law, effective on January 1, 1977, which applies to the State University Board of Trustees, College Councils and Boards of Trustees of Community Colleges. A copy of the law (Public Officers Law, Article 7) is attached.

A "meeting" is defined as the formal convening of a public body for the purpose of officially transacting public business. Any meeting, therefore, which adopts resolutions having official force and effect is covered by the law. An executive or private meeting may be called on the vote of an absolute majority for the purpose of transacting business on a limited number of subjects enumerated at section 95 of the law.

The minutes of executive sessions need only report an action taken by formal vote. These minutes shall consist of a summary of the final determination reflected by that vote. The minutes need not show any matter not made available to the public under the Freedom of Information Law. Accordingly, the debate leading to the formulation of the final position adopted by resolution need not be recited. See the various Memoranda to Presidents on the Freedom of Information Law, especially Vol. 74, No. 23, at page 2. The more complete minutes required at open meetings are described at section 96 (1) of the Open Meetings Law.

The law provides that an aggrieved party may enforce the statute by bringing an appropriate action in the courts. Upon good cause shown, the court may declare void any action taken by a public body in a meeting which fails to conform with the requirements of the law.

Many questions of practical application remain unanswered by the law. The Committee on Public Access to Records
has been created to advise public bodies and the citizenry with respect to these matters. We will keep you advised of any significant interpretations by the Committee. The Office of University Affairs will be glad to share information with you regarding the arrangements which have been developed for meetings of the Board of Trustees under the new law.

Walter J. Relihan, Jr.

Attachment

This memorandum addressed to:

Presidents, State-operated campuses
Presidents, Community Colleges

Copies for information to:

Deans, Statutory Colleges
President Rose
Mr. Barlow

cc: Chairmen, College Councils
Chairman, Board of Trustees of College of Environmental Science and Forestry
Chairmen, Board of Trustees of Community Colleges
Assembly Bill No. 7501-C—Introduced by Messrs. LISA, STEINGUT—Multi-Sponsored by—Miss AMATUCCI, Messrs. BARBARO, BETROS, BIANCHI, BLUMENTHAL, BROWN, BURROWS, CALOGERO, CINCOTTA, COCHRANE, Mrs. CONNELLY, CONNOR, C. D. COOK, COOPERMAN, CULHANE, D'ANDREA, DEARIE, DELLI BOVI, DETORO, DeSALVIO, Mrs. DIGGS, DOKUCHITZ, DURYEA, EMERY, ESPOSITO, EVE, FARRELL, FERRIS, FIELD, FINK, FLACK, FLANAGAN, FORTUNE, FREMMING, FREY, Miss GADSON, Mrs. GOODHUE, GORSKI, GOTTFRIED, GRABER, GRANNIS, GRECO, GRIFFIN, GRIFFITH, HALLEY, HANNA, HARENBERG, HARRIS, HAWLEY, HECHT, HENDERSON, HERBST, HEVESI, HINCHLEY, HOCHBERG, HOCHBRUECKNER, HOYT, HURLEY, IZARD, KELLEHER, KIDDER, KOPPELL, KREMER, LANDES, LANE, Lasher, LEHNER, LENTOL, LEVY, LEWIS, LILL, Mrs. LIPSCHUTZ, LOPRESTO, MANNIX, MARCISELLI, MARSHALL, McCABE, MEGA, H. J. MILLER, H. M. MILLER, M. H. MILLER, MOLINARI, M. J. MURPHY, NICOLosi, NINE, O'NEIL, ORAZIO, PASSANANTE, PESCE, POSNER, RAPPELL, ROACH, ROOSA, ROSS, Mrs. RUNYON, RYAN, SCHMIDT, SCHUMER, SEARS, SERRANO, SHAROFF, SIEGEL, SILVERMAN, SOLOMON, STOTT, STREIZIN, SUCHIN, SULLIVAN, TALLON, TAYLOR, THORP, VANN, VELELLA, VIGILIO, WALSH, WEMPLE, WEPRIN, WERTZ, YEOLI, ZAGAME, ZIMMER—read twice and substituted for senate bill No. 6135-B by Sens. MARINO, ANDERSON, Auer, BARTOSIEWICZ, BABU$H, BELLAMY, BERNSTEIN, BLOOM, BURSTEIN, CALANDRA, CONKLIN, DONOVAN, DUNNE, ECKERT, FLYNN, GALIBER, GARCIA, GAZZARA, GIUFFREDA, GOLD, GOODMAN, GORDON, GRIFFIN, HALPERIN, HUDSON, ISABELLA, JOHNSON, LEICHTER, LEVY, LEWIS, MARCHI, McCall, Nolan, OHRENSTEIN, OWENS, PADAVAN, PATerson, PERRY, PISANI, PRESENT, ROLISON, RUIZ, SCHRERHORN, SANTUCCI, TAURIELLO, TRUNZO, VOLKER, WINKOW—ordered to a third reading, amended and ordered reprinted retaining its place in the order of third reading

EXPLANATION—Matter in它是 is new; matter in brackets [ ] is old law to be omitted.
AN ACT

to amend the public officers law, in relation to open meetings of public bodies
performing governmental functions for the state or a public corporation

The People of the State of New York, represented in Senate and Assembly, do
enact as follows:

Section 1. Article seven and sections ninety, ninety-one and ninety-two of the
public officers law, such article having been renumbered by chapter five hundred
seventy-eight of the laws of nineteen hundred seventy-four, are hereby
renumbered to be article eight and sections one hundred five, one hundred six
and one hundred seven, respectively, and a new article seven is hereby inserted
therein, to read as follows:

ARTICLE 7

OPEN MEETINGS LAW

Section 90. Legislative declaration.

91. Short title.

92. Definitions.

93. Open meetings and executive sessions.

94. Public notice.

95. Conduct of executive sessions.

96. Minutes.

97. Enforcement.

98. Exemptions.

99. Committee on public access to records.

100. Construction with other laws.

101. Severability.

§ 90. Legislative declaration. It is essential to the maintenance of a democratic
society that the public business be performed in an open and public manner and that
the citizens of this state be fully aware of and able to observe the performance of public
officials and attend and listen to the deliberations and decisions that go into the
making of public policy. The people must be able to remain informed if they are to
retain control over those who are their public servants. It is the only climate under
which the commonweal will prosper and enable the governmental process to operate for
the benefit of those who created it.

§ 91. Short title. This article shall be known and may be cited as "Open Meetings
Law".

§ 92. Definitions. As used in this article: 1. "Meeting" means the formal
convening of a public body for the purpose of officially transacting public business.
2. "Public body" means any entity, for which a quorum is required in order to transact public business and which consists of two or more members, performing a governmental function for the state or for an agency or department thereof, or for a public corporation as defined in section sixty-six of the general construction law.

3. "Executive session" means that portion of a meeting not open to the general public.

§ 93. Open meetings and executive sessions. Every meeting of a public body shall be open to the general public, except that an executive session of such body may be called and business transacted thereat in accordance with section ninety-five of this article.

§ 94. Public notice. 1. Public notice of the time and place of a meeting scheduled at least one week prior thereto shall be given to the public and news media at least seventy-two hours before such meeting.

2. Public notice of the time and place of every other meeting shall be given, to the extent practicable, to the public and news media at a reasonable time prior thereto.

3. The public notice provided for by this section shall not be construed to require publication as a legal notice.

§ 95. Conduct of executive sessions. 1. Upon a majority vote of its total membership, taken in an open meeting pursuant to a motion identifying the general area or areas of the subject or subjects to be considered, a public body may conduct an executive session for the below enumerated purposes only, provided however, that no action by formal vote shall be taken to appropriate public moneys:

a. matters which will imperil the public safety if disclosed;

b. any matter which may disclose the identity of a law enforcement agent or informer;

c. information relating to current or future investigation or prosecution of a criminal offense which would imperil effective law enforcement if disclosed;

d. discussions regarding proposed, pending or current litigation;

e. collective negotiations pursuant to article fourteen of the civil service law;

f. the medical, financial, credit or employment history of any person or corporation, or matters leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of any person or corporation;

g. the preparation, grading or administration of examinations; and

h. the proposed acquisition, sale or lease of real property, but only when publicity would substantively affect the value of the property.

2. Attendance at an executive session shall be permitted to any member of the public body and any other persons authorized by the public body.

§ 96. Minutes. 1. Minutes shall be taken at all open meetings of a public body
which shall consist of a record or summary of all motions, proposals, resolutions and any other matter formally voted upon and the vote thereon.

2. Minutes shall be taken at executive sessions of any action that is taken by formal vote which shall consist of a record or summary of the final determination of such action, and the date and vote thereon; provided, however, that such summary shall not include any matter which is not required to be made public by the freedom of information law as added by article six of this chapter.

3. Minutes of meetings of all public bodies shall be available to the public in accordance with, and to the same extent and in the same manner as is authorized for governing bodies by, the provisions of the freedom of information law as added by article six of this chapter, except that minutes taken pursuant to subdivision two hereof shall be available to the public within one week from the date of the executive session.

§ 97. Enforcement. 1. Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of a proceeding pursuant to article seventy-eight of the civil practice law and rules, and/or an action for declaratory judgment and injunctive relief. In any such action or proceeding, the court shall have the power, in its discretion, upon good cause shown, to declare any action or part thereof taken in violation of this article void in whole or in part.

An unintentional failure to fully comply with the notice provisions required by this article shall not alone be grounds for invalidating any action taken at a meeting of a public body. The provisions of this article shall not affect the validity of the authorization, acquisition, execution or disposition of a bond issue or notes.

2. In any proceeding brought pursuant to this section, costs and reasonable attorney fees may be awarded by the court, in its discretion, to the successful party.

3. The statute of limitations in an article seventy-eight proceeding with respect to an action taken at executive session shall commence to run from the date the minutes of such executive session have been made available to the public.

§ 98. Exemptions. Nothing contained in this article shall be construed as extending the provisions hereof to:

1. judicial or quasi-judicial proceedings;

2. deliberations of political committees, conferences and caucuses; and

3. any matter made confidential by federal or state law.

§ 99. Committee on public access to records. The committee on public access to records, created by paragraph a of subdivision nine of section eighty-eight of this chapter, shall:

1. issue advisory opinions from time to time as, in its discretion, may be required to inform public bodies and persons of the interpretations of the provisions of the open meetings law; and
2. review the implementation and operation of this article and report thereon not later than February first of each year to the legislature together with such recommendations as the committee deems advisable.

3. prepare model rules, regulations, resolutions, ordinances or local laws which may be adopted by public bodies for giving public notice of meetings to the public and news media in accordance with the provisions of section ninety-four of this article.

§ 100. Construction with other laws. 1. Any provision of a charter, administrative code, local law, ordinance, or rule or regulation affecting a public body which is more restrictive with respect to public access than this article shall be deemed superseded hereby to the extent that such provision is more restrictive than this article.

2. Any provision of general, special or local law or charter, administrative code, ordinance, or rule or regulation less restrictive with respect to public access than this article shall not be deemed superseded hereby.

3. Notwithstanding any provision of this article to the contrary, a public body may adopt provisions less restrictive with respect to public access than this article.

§ 101. Severability. If any provision of this article or the application thereof to any person or circumstances is adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or impair the validity of the other provisions of the article or the application thereof to other persons and circumstances.

§ 2. This act shall take effect January first, nineteen hundred seventy-seven.