



State of New Jersey

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Stephen B. Sasala, Acting Director
Division of Local Government Services
Department of Community Affairs
101 South Broad Street
P.O. Box 800
Trenton, New Jersey 08625-0800

Re: FORMAL OPINION NO. 1 - 1998

Minutes of Closed Sessions of Public Bodies

Dear Acting Director Sasala:

Recently, it has been brought to our attention that there may be some confusion over the requirements of the Open Public Meetings Act with regard to the keeping of minutes of closed session. The Attorney General is issuing this Formal Opinion in order to resolve any uncertainty surrounding the dictates of the law in this area.

The Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., sets standards for all public bodies for the preparation of minutes of meetings.

Each public body shall keep reasonably comprehensible minutes of all its meetings showing the time and place, the members present, the subjects considered, the action taken, the vote of each member, and any other information required to be shown in the minutes by law, which shall be promptly available to the public to the extent that making such matters public shall not be inconsistent with [N.J.S.A. 10:4-12]. [N.J.S.A. 10:4-14].

Construction of any statute necessarily begins with consideration of its plain language. Merin v. Maglaki, 126 N.J. 430, 434 (1992); Kimmelman v. Henkels & McCoy, Inc., 108 N.J. 123 (1987). Such language should be given its ordinary meaning, absent a legislative intent to the contrary. Town of Morristown v. Woman's Club, 124 N.J. 605, 610 (1991).

The language of N.J.S.A. 10:4-14 plainly states that a public body as defined in the Act shall keep minutes of "all its meetings." (Emphasis added). No distinction is made between those meetings or parts of meetings held in public session and those meetings or parts of meetings held in closed or executive session. Thus, it has been our longstanding construction of the Act that minutes of closed sessions must be made and maintained.

This view is confirmed by reference to N.J.S.A. 10:4-13. That statutory section dictates the procedure for a public body to go into closed session. It specifically requires that the public body first adopt a resolution (a) stating the general nature of the subject to be discussed in private, and (b) stating as precisely as possible, the time when and circumstances under which the closed session discussion can be disclosed to the public. Thus, N.J.S.A. 10:4-13 contemplates that minutes of discussions in closed session will be kept and considered for public release at some future date.

The Supreme Court of New Jersey has further confirmed the view that closed session minutes must be kept. In South Jersey Publishing Co. v. New Jersey Expressway Authority, 124 N.J. 478, 493 (1991), the Court expressly noted that the Open Public Meetings Act specifically requires that the public body "maintain 'reasonably comprehensible minutes' of all meetings including executive sessions...." Thus, the law unambiguously requires minutes of closed or executive sessions to be made and maintained.

N.J.S.A. 10:4-14 requires that the minutes of any meeting be "reasonably comprehensible" and, at a minimum, contain information showing "the time and place, the members present, the subjects considered, the actions taken, the vote of each member, and any other information required to be shown in the minutes by law." The Supreme Court has construed this statutory provision as requiring "sufficient facts and information to permit the public to understand and appraise the reasonableness of the public body's determination." South Jersey Publishing Co., *supra*, 124 N.J. at 493. However, it is clear that such minutes do not need to be a verbatim transcript of the discussion.

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For the above-stated reasons, we reaffirm our clear understanding that minutes of closed or executive sessions of public bodies must be made and maintained. We can express no general opinion as to when such minutes must be disclosed because that fact-sensitive issue must be determined on a case-by-case basis consistent with applicable law.

We would ask that you take whatever steps you deem appropriate to circulate this Formal Opinion to county and municipal government officials. Thank you for your attention to this important issue.

Sincerely yours,

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