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PUBLIC HEARING
before
ASSEMBLY JUDICIARY COMMITTEE,
on

A-1030 (The Open Public Meetings Act)

Held:
March 14, 1974
Hearing Room 212
1100 Raymond Boulevard
Newark, New Jersey

MEMBERS PRESENT:

Assemblyman Eldridge Hawkins, Chairman
Assemblyman William J. Bate, Vice-Chairman
Assemblyman Richard James Codey
Assemblyman John P. Doyle
Assemblyman Thomas A. Gallo
Assemblyman John T. Gregorio
Assemblyman Alan J. Karcher
Assemblyman John A. Spizziri

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ASSEMBLY, No. 1030

STATE OF NEW JERSEY

INTRODUCED JANUARY 28, 1974

By Assemblymen BAER, WOODSON, HAMILTON, KEAN, BARBOUR, OWENS, MARTIN, KLEIN, Assemblywoman WILSON, Assemblymen WEIDEL, PERSKIE, WORTHINGTON, VAN WAGNER, SALKIND, HAWKINS, LEFANTE, FITZPATRICK, STEWART, YATES SWEENEY, RUANE, GEWERTZ, HOLLENBECK, VISOTCKY, HERMAN, FROUDE MACINNES, FORAN, CONTILLO, GLADSTONE, OTLOWSKI, FLYNN, NERI, FLORIO, McMANIMON, KOZLOSKI, GREGORIO, D'AMBROSA, McCARTHY, RYS, Assemblywomen CURRAN, CROCE, Assemblyman KARCHER, Assemblywoman TOTARO, Assemblymen BROWN, GORMAN, PERKINS, JACKMAN, GALLO, NEWMAN, DOYLE, DEVERIN, CODEY, KEEGAN, ADUBATO, CALI, ESPOSITO, Assemblywoman BURGIO, Assemblymen CHINNICI, EWING, HURLEY, ORECHIO, BATE, SCHUCK, BORNHEIMER, SINSIMER, PELLECCIA, SNEDEKER, GALLAGHER, HICKS, PATERO, GARRUBBO and RIZZOLO

Referred to Committee on Judiciary

AN ACT concerning meetings of certain public bodies and repealing
P. L. 1960, c. 173.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. This act shall be known and may be cited as the "Open Public
2 Meetings Act."

1 2. The Legislature finds and declares that the right of the public
2 to be present at all meetings of public bodies, and to witness in
3 full detail all phases of the deliberation, policy formulation, and
4 decision making of public bodies, is vital to the enhancement and
5 proper functioning of the democratic process; that secrecy in public
6 affairs undermines the faith of the public in government and the
7 public's effectiveness in fulfilling its role in a democratic society,
8 and hereby declares it to be the public policy of this State to insure

9 the right of its citizens to have adequate advance notice of and the
10 right to attend all meetings of public bodies at which any business
11 affecting the public is discussed or acted upon in any way except
12 only in those circumstances where otherwise the public interest
13 would be clearly endangered or the personal privacy or guaranteed
14 rights of individuals would be clearly in danger of unwarranted
15 invasion.

1 3. As used in this act:

2 a. "Public body" means a commission, authority, board, council,
3 committee and every other group organized under the laws of this
4 State consisting of two or more persons, to perform a public gov-
5 ernmental function, including the Legislature, and any committee
6 composed of members of such public body or appointed or estab-
7 lished by it, but does not mean or include the office of the Governor,
8 the judicial branch of the government, any parole board or any
9 agency or body acting in a parole capacity, the State Commission
10 of Investigation.

11 b. "Meeting" means and includes any gathering attended by,
12 or open to, all of the members of a public body, held with the in-
13 tent, on the part of the members of the body, to discuss or act upon
14 public business.

15 c. "Public business" means and includes all matters acted upon
16 or discussed by a public body which relate in any way, directly or
17 indirectly, to the performance of its functions or the conduct of its
18 business.

19 d. "Act upon or discuss" means and includes the discussion and
20 voting upon motions, resolutions, rules, regulations, policies, ordi-
21 nances and statutes; discussion as to whether or not any of the
22 same shall be adopted or acted upon or placed on the agenda of
23 the public body for present or future action; discussion or action
24 pertaining to the procedures to be followed by the public body in
25 conducting any meeting, or any hearing it may hold or propose
26 to hold, or the procedure to be followed by it with respect to any
27 matter coming before it; discussions which relate in any way to
28 the taking or not taking of any action by the public body or any
29 of its agents, employees, committees or agencies; and discussions
30 or actions which relate in any way to the governmental functions
31 for which the public body was established.

32 e. "Adequate notice" means written advance notice of at least
33 72 hours, giving the time, date, and location of the proposed meet-
34 ing or meetings, (1) prominently posted in at least one public place
35 reserved for such or similar announcements, (2) mailed to at least
36 two newspapers circulating in the municipality in which the pro-

37 posed meeting is to be held, at least one of which newspapers is
38 regularly published at least 5 days per week and at least one of
39 which is the official newspaper, where any such has been designated
40 by the public body or applicable political subdivision, and (3) filed
41 with the clerk of the municipality, or the clerk of the county or the
42 Secretary of State in the case respectively of municipal, county
43 or other public bodies.

1 4. a. Except as provided by subsection b. of this section, or for
2 any meeting limited only to consideration of items listed in sec-
3 tion 6. b. no public body shall hold a meeting unless adequate notice
4 thereof has been provided to the public.

5 b. A public body may hold a meeting notwithstanding the failure
6 to provide adequate notice if:

7 (1) such meeting is required in order to deal with matters of
8 such urgency and importance that a delay for the purpose of pro-
9 viding adequate notice would be likely to result in substantial harm
10 to the public interest; and

11 (2) the meeting is limited to discussion of and acting with
12 respect to such matters of urgency and importance; and

13 (3) notice of such meeting is provided as soon as possible fol-
14 lowing the calling of such meeting by posting written notice of the
15 same in the public place described in section 3. e. above, and also
16 by notifying the two newspapers described in section 3. e. by tele-
17 phone, telegram, or by delivering a written notice of same to such
18 newspapers; and

19 (4) either (a) the public body could not reasonably have fore-
20 seen the need for such meeting at a time when adequate notice
21 could have been provided; or (b) although the public body could
22 reasonably have foreseen the need for such meeting at a time when
23 adequate notice could have been provided, it nevertheless failed to
24 do so.

1 5. At the commencement of every meeting of a public body the
2 person presiding shall announce publicly, and shall cause to be
3 entered in any minutes of the meeting, a statement to the effect:

4 a. that adequate notice of the meeting has been provided, specify-
5 ing the time, place, and manner in which such notice was pro-
6 vided; or

7 b. that adequate notice was not provided, in which case such
8 announcement shall state (1) the nature of the urgency and im-
9 portance referred to in subsection 4. b. (1) and the nature of the
10 substantial harm to the public interest likely to result from a
11 delay in the holding of the meeting; (2) that the meeting will be
12 limited to discussion of and acting with respect to such matters

13 of urgency and importance; (3) the time, place, and manner in
14 which notice of the meeting was provided; and (4) either (a) that
15 the need for such meeting could not reasonably have been foreseen
16 at a time when adequate notice could have been provided, in which
17 event, such announcement shall specify the reason why such need
18 could not reasonably have been foreseen; or (b) that such need
18a could reasonably have been foreseen at a time when adequate notice
19 could have been provided, but such notice was not provided, in
20 which event the announcement shall specify the reason why ade-
21 quate notice was not provided.

1 6. a. Except as provided by subsections b. and c. of this section,
2 all meetings of public bodies shall be open to the public at all times.

3 b. A public body may exclude the public only from that portion
4 of a meeting at which the public body discusses:

5 (1) Any matter which, by express provision of law is rendered
6 confidential or is excluded from the provisions of subsection a. of
7 this section.

8 (2) Any matter in which the release of information would im-
9 pair a right to receive funds from the Government of the United
10 States.

11 (3) Any personal records, data, reports, recommendations, or
12 other personal material of any educational, training, social service,
13 medical, health, custodial, child protection, rehabilitation, legal
14 defense, welfare, housing, relocation, insurance and similar pro-
15 gram or institution operated by a public body pertaining to any
16 specific individual admitted to or served by such institution or
17 program, including but not limited to information relative to the
18 individual's personal and family circumstances, and any material
19 pertaining to admission, discharge, treatment, progress or condi-
20 tion of any individual, unless the individual concerned (or his
21 guardian) shall request in writing that the same be disclosed
22 publicly.

23 (4) Any collective bargaining agreement, or proposed collective
24 bargaining agreement, or the terms and conditions which the public
25 body proposes to include in any collective bargaining agreement,
26 including the negotiation of the terms and conditions thereof with
27 employees or representatives of employees of the public body;
28 provided, however, that any such collective bargaining agreement
29 shall be finally approved by the public body only at a meeting to
30 which the public is admitted.

31 (5) Any matter involving the purchase of lands with public
32 funds, the protection of the physical safety of public officials, in-

33 investigations of violations or possible violations of the law, any
34 pending or anticipated litigation or contract negotiation other than
35 in subsection b. (4) herein in which the public body is, or may
36 become a party, or other activities where the accomplishment of
37 the object of the public body is likely to be materially prejudiced
38 if its action or proposed action is made publicly known prior to
39 the accomplishment of such object; provided however, that before
40 discussing or acting upon any matter described in this subsection,
41 the public body shall first adopt a resolution, at a meeting to which
42 the public shall be admitted:

43 (a) stating the general nature of the subject to be acted
44 upon or discussed;

45 (b) determining that accomplishment of the object of the
46 public body is likely to be materially prejudiced if its action
47 or proposed action is made publicly known prior to the ac-
48 complishment of such object, and stating, in general terms,
49 the reasons why such material prejudice would be likely to
50 result, and, as precisely as possible, the time when or the
51 circumstances under which the action or discussion of the
52 public body can be disclosed to the public.

53 (6) Any matter involving the employment, continued employ-
54 ment, termination of employment, terms and conditions of
55 employment, evaluation of the performance of, or disciplining of,
56 any individual employed by the public body, unless the public body
57 has received from the individual employee or employees whose
58 rights could be adversely affected a consent in writing that such
59 matter or matters may be discussed at a meeting from which the
60 public is excluded.

1 7. a. Any action taken by a public body at a meeting which does
2 not conform with the provisions of this act shall be void.

3 b. Any party, including any member of the public, may institute
4 a proceeding in lieu of prerogative writ in the Superior Court to
5 challenge any action taken by a public body on the grounds that
6 such action is void for the reasons stated in subsection a. of this
7 section, and if the court shall find that the action was taken at a
8 meeting which does not conform to the provisions of this act, the
9 court shall declare such action void.

1 8. Any person, including a member of the public, may apply to
2 the Superior Court for injunctive orders or other remedies to in-
3 sure compliance with the provisions of this act, and the court shall
4 issue such orders and provide such remedies as shall be necessary
5 to insure compliance with the provisions of this act.

1 9. Any person who knowingly participates in a meeting of a
2 public body of which he is a member, not held in accordance with
3 the provisions of this act, is a disorderly person.

1 10. At least once each year, within 7 days following the annual
2 organization or reorganization meeting of a public body, or if
3 there be no such organization or reorganization meeting in any
4 year, then by not later than January 7 of such year, every public
5 body shall post in the place described in subsection 3. e. (1), mail
6 to the newspapers described in subsection 3. e. (2), submit to the
7 persons described in subsection 3. e. (3), for the purpose of public
8 inspection a schedule of the regular meetings of the public body
9 to be held during the succeeding year. Such schedule shall contain
10 the location of each meeting to the extent it is known, and the time
11 and date of each meeting. In the event that such schedule is there-
12 after revised, the public body, within 7 days following such revision,
13 shall post, mail and submit such revision in the manner described
14 above.

1 11. Any person may request that a public body mail to him ad-
2 vance written notice of all meetings of such body, and upon pre-
3 payment by such person of a reasonable sum, if any has been fixed
4 by resolution of the public body to cover the costs of providing
5 such notice, the public body shall mail to such person written ad-
6 vance notice of all of its meetings within the time prescribed by
7 subsection 3. e. herein, subject only to the exceptions set forth in
8 subsection 4. b. herein.

1 12. If any section, subsection, clause, sentence, paragraph, or
2 part of this act or the application thereof to any person or circum-
3 stances, shall, for any reason, be adjudged by a court of competent
4 jurisdiction to be invalid, such judgment shall not affect, impair,
5 or invalidate the remainder of this act.

1 13. This act shall be liberally construed in order to accomplish
2 its purpose and the public policy of this State as set forth in sec-
3 tion 2.

1 14. P. L. 1960, c. 173 (C. 10:4-1 to 10:4-5) is repealed.

1 15. This act shall take effect 90 days after its enactment.

STATEMENT

The public's right to know the true source of governmental decisions and to witness in full detail the process of public policy formulation is frequently obstructed by the inability of members of the public and the press to attend certain policy-making sessions of public bodies. This bill would put the conduct of public business

on an entirely open basis by requiring all discussions and decisions of public bodies, including those now held or made in "executive sessions," to take place at meetings open to the public and for which adequate notice has been given.

Action taken without adequate notice would be invalid except under special procedures for demonstrable emergencies. Highly embarrassing required notices would discourage public bodies from using avoidable emergencies to circumvent adequate notice requirements.

Confidential deliberation would be permitted only in those exceptions where, otherwise, the public interest would be clearly endangered or the personal privacy or guaranteed rights of individuals would be clearly in danger of unwarranted invasion.

1 ASSEMBLYMAN ELDRIDGE HAWKINS (Chairman): I
2 think we can start the meeting. Assemblyman Baer, sponser
3 of the bill, has not arrived yet. I can introduce those
4 legislators present that will be on the panel hearing
5 the matter, and I'm going to give some introductory
6 remarks as to some of the problems we are already aware
7 of with reference to the bill, so that if you wish to
8 address yourselves to what we already know feel free.
9 But we will let you know that we know some of the problems.

10 I would like to introduce at this time some
11 of the members present: Assemblyman Richard Codey,
12 from Orange; Assemblyman Thomas Gallo, from Hoboken; to
13 my right is Vice-Chairman of the committee, William J.
14 Bate, from Clifton; and to the extreme right of myself
15 is the Honorable John P. Doyle, from Bricktown, New Jersey;
16 and myself, I'm Eldridge Hawkins, Chairman.

17 Very briefly, I am just going to read off
18 some of the questions that are raised by A-1030 as it
19 is presently drafted.

20 1. There are documents which are not public
21 under the right to know law which would have to be
22 discussed in public under this bill, unless section 6 b.(1)
23 which exempts matters made confidential by express
24 provision of law is read to mean matters which relate
25 to non-public documents which are private because they

1 are not public. Should the right to know law be changed
 2 so that documents which are discussed in public are
 3 clearly either public or not public, or should the bill
 4 be changed to exempt discussion of those documents which
 5 are presently not public from public meetings and then
 6 change the right to know law to make public what should
 7 be public?

8 2. Should action as well as discussion be
 9 allowed at an executive session? A-1030, section 6,
 10 begins with "discussion" but at the end of the section
 11 refers to when the "action" can be disclosed. It is
 12 therefore unclear whether the intent is that such action
 13 can be taken in executive session or not.

14 3. Section 4 b. provides that if there is no
 15 notice, and if it is so announced at the beginning of the
 16 meeting and the meeting is limited to matters of "urgency
 17 and importance," they have satisfied the act, even
 18 though they could have anticipated and notified as
 19 required. Should this be so?

20 4. Under section 2 (b) a "meeting" which must
 21 be public is one which all members can attend. If not,
 22 it can be closed. This keeps the legislative party
 23 conferences closed but may also close the system in most
 24 communities because minority party members will be just
 25 totally excluded from much of the decision making process.

1 5. Criminal penalties are available in other
2 states for this kind of law and have never been used.
3 Should the penalty be changed to a forfeiture of office
4 or a fine?

5 6. Section 7 makes any decision made at a
6 meeting in violation of the act null and void. It is
7 similar to a provision in a California bill which caused
8 the Governor to veto that bill. California now has a law
9 without any provision for voiding such actions. Should
10 this section be changed to give the court discretion to
11 void actions or should it be eliminated?

12 7. The sending of 72 hours notice to two
13 newspapers which circulate in the municipality where the
14 meeting is to be held seems inadequate for public notice
15 for both county and state agencies. It is also unclear
16 if this is to be a legal notice. In addition, there are
17 many regional bodies who cover several counties for whom
18 filing with either one county clerk or the Secretary of
19 State would not provide much notice and again the
20 newspaper notice provided would be insufficient.

21 8. It is unclear whether failure to send 72
22 hour notice to those on the mailing list provided for in
23 section 11 is a violation of the advanced notice requirement
24 of section 3 e. There is also no provision for removing
25 names from the list after a period of time.

1 9. There is no provision for minutes of the
2 meeting to be kept. Should there be?

3 10. Only the purchase of land but not the
4 rental or condemnation of land is exempt from public
5 discussion. Should the other be protected as well, at
6 least in certain circumstances?

7 11. The employment exception is for those
8 "employed" by the public body which could be construed
9 as not exempting the Senate consideration of appointees
10 in the advise and consent process and the appointment
11 and removal of those on boards, etc. of municipal and
12 county governments.

13 12. The definition of "public body" can be read
14 to include advisory groups. Should these be specifically
15 included?

16 13. Should those who bring suit to enforce the
17 act be entitled to costs and attorney's fees if they are
18 successful? Under the present section 8 they should not.

19 Assemblyman Gregorio has just joined us, from
20 Linden, New Jersey.

21 I'm sorry Assemblyman Baer has not as yet
22 arrived, but I don't think we should hold up the hearing.
23 We will allow him to speak when he arrives.

24 The second man listed on the list is Mr. Michael
25 Rappeport.

1 Incidentally, there will not be any specific
2 limitation to the time limit that you may have to give
3 your talk or give whatever you have to give to the panel.
4 But if I, in my discretion, find that it's taking a little
5 bit too much time, or if we have already heard the same
6 material discussed by someone else, then I will use my
7 prerogative to remind you that we have a few minutes more
8 to hear your talk and you will have to call it at an end
9 very shortly. But feel free to tell us your complete
10 story, each one of you.

11 MICHAEL RAPPEPORT: I have a few copies of a
12 prepared statement.

13 Mr. Chairman, and members of the committee:

14 I speak on behalf of the American Civil Liberties
15 Union of New Jersey.

16 This measure, designated the Open Public Meetings
17 Act, goes a long way toward the goals of opening to
18 public view the transaction by public bodies of public
19 business. Beyond its direct effects in this regard is the
20 atmosphere of openness which this measure would foster.

21 The care with which this bill seeks to delineate
22 public matter and the guidelines applicable thereto, the
23 thoughtful separation of public matter from matter
24 appropriately in the domain of protected privacy, are
25 particularly well thought out.

1 I might say parenthetically that the relatively
2 minor comments I think that the chairman made in
3 introducing the bill, most of those we would like to see
4 the stronger position taken, naturally, with the exception
5 perhaps of the rental or condemnation of the land, which
6 we think is a reasonable exclusion of the public view.

7 This measure will not relieve all of the abuses
8 resulting from secret deliberations. Certainly problems
9 neither foreseen nor foreseeable may arise, but these
10 may be corrected as experience requires. It has been
11 claimed that this bill would prevent any private discussion,
12 prevent party caucuses, and, according to at least one
13 town council which has gone on record in opposition,
14 "would require public notice if two councilmen happened
15 to meet over a cup of coffee." The bill itself
16 answers these complaints. Section 3(b) defines a meeting
17 as "...any gathering attended by, or open to ALL of the
18 members of a public body." It appears that of these
19 objections the bill is applicable only to caucuses of a
20 party holding all of the seats on the public body, a
21 circumstance which does apply to a few municipal councils
22 and other bodies but is far from generally the case. The
23 need for a political party or faction to be able to meet
24 privately to discuss strategy, negotiate policy disputes
25 and develop compromises is clear. Where one party controls

1 all of the seats on a public body, however, such discussions
 2 tend frequently to be private meetings at which decisions
 3 are made without public debate or recourse. When the
 4 decision is made in a private caucus to "kill" a proposal,
 5 the opportunity for an open and public vote is lost. Thus,
 6 if party caucuses are included in the bill where one
 7 party holds all of the seats in a public body, we regard
 8 it as right and proper that they should be.

9 Indeed, the only significant shortcoming in
 10 A-1030 is the omission of a duty to report the decisions
 11 of majority party caucuses which preclude public votes
 12 in this and other legislative bodies. It would be
 13 desirable, therefore, to add language to the bill's
 14 definition of a meeting to include meetings of any
 15 number of members of a public body which take votes or
 16 polls which in practice bind a majority of that body
 17 to a specific position. And note, we should have
 18 emphasized in practice. Legally, there is no binding,
 19 but in practice it does that. And we are strongly in
 20 favor of not allowing people to hide behind the private
 21 caucus as to why a bill never came to the floor. Such
 22 a change would not intrude on the privacy of any meeting
 23 devoted to discussion and negotiation, at which no binding
 24 vote was taken. An alternate approach to the problem of
 25 insuring that party caucuses do not prevent debate of

1 important issues would be to provide a mechanism by which
2 a majority--perhaps as little as 15 per cent--can compel
3 a public body to take formal action on any proposal,
4 assuming, of course, reasonable rules about length of
5 time and this type of thing.

6 Even without such a change we commend the bill
7 as an intelligent approach to the problem of insuring
8 public accountability and urge its adoption.

9 I will be glad to answer any questions.

10 ASSEMBLYMAN HAWKINS: Thank you very much for
11 your presentation.

12 The Honorable John P. Davidson, Mayor of
13 Chatham Borough.

14 HONORABLE JOHN P. DAVIDSON: Mr. Chairman,
15 Members of the Assembly Committee on Judiciary:

16 My name is John P. Davidson. I am the Mayor
17 of Chatham Borough and President of the New Jersey State
18 League of Municipalities. I am appearing here today
19 on behalf of the New Jersey League.

20 The League's Legislative Committee has not
21 completed its consideration of Assembly 1030, the Open
22 Public Meetings Act. My comments, therefore, are primarily
23 in the nature of observations and questions rather than
24 the statement of a formal policy position. We understand
25 that many other local officials have statements to make

1 concerning A-1030. This statement should not in any
2 manner preclude those observations or limit the numerous
3 questions raised by other local officials.

4 The purpose and objectives of A-1030 are
5 philosophically sound, and we would support them in
6 principle. A number of questions concerning specific
7 provisions have been raised by individual officials,
8 however, and I would like to address my remarks to those
9 questions.

10 Our first query concerns the definition of
11 "public body." We wonder why the office of the
12 Governor is specifically excluded from the provisions
13 of this Act. It would appear to us that the public's
14 interest in the conduct of the affairs of this State
15 are equally relevant to the conduct of the Governor's
16 office, and in fact, even more so.

17 Our second question concerns the definition
18 of "meeting." Would this definition, as presently
19 drafted, apply to a chance discussion between a Township
20 Mayor, the member of the Township Committee who is
21 chairman of Public Safety and the Police Chief concerning
22 the application of new drug control techniques which the
23 three men had read about the evening before in an article
24 in the current issue of a police magazine? Other members
25 of the public body were not present, but would have been

1 welcomed to the discussion if they had happened by at the
2 local barber shop or Little League game or wherever the
3 discussion took place. And what if the discussion involved
4 not two, but three members of the local public body and,
5 as is the case in many townships, the three comprised the
6 total governing body? And what if the conversation was
7 merely a discussion along the lines of, "Maybe we ought
8 to talk seriously about this at a meeting sometime"? Or
9 how about five members of a planning board, who, while on
10 a trip to inspect a subdivision site, discuss that site
11 or chance to comment about some other pending application
12 location which they pass on the way? Would the provisions
13 of this Act apply to the countless quasi-official encounters
14 such as those?

15 A third question relates also to discussions of
16 public business. We can visualize numerous instances,
17 for example, where the practices and reputation of a
18 contractor or supplier might be questioned by a member
19 of the municipal council or committee. It might develop
20 that the member had merely heard that another community
21 or other customers had encountered a problem with a
22 particular supplier in terms of delivery deadlines,
23 reliability, etc. and suggests that further inquiry be
24 made by way of verification before the public body commits
25 itself contractually. What if such rumors are merely rumors?

1 If they were voiced by a public official at a public
2 meeting, regardless of his good intentions, would this be
3 cause for libel proceedings on the part of the supplier
4 involved? Or what if the supplier or consultant or
5 contractor had a now largely corrected alcoholism problem
6 in his past? Should such a matter be openly discussed
7 at a public meeting? This particular category does
8 not appear to be adequately covered by the exemption
9 contained in paragraph 6(3) on page 4 dealing with various
10 records and reports of a confidential nature.

11 "Act upon or discuss" also includes the "taking
12 or not taking of any action by the public body or any of
13 its agents, employees, committees or agencies." We doubt
14 that the public would have to be present every time a
15 local employee takes an action in carrying out his govern-
16 mental duties. We also question whether any council
17 committee could operate under this definition.

18 Our next question concerns "adequate notice."
19 Does the reference to "written advance notice" mean
20 merely that information must be provided to the newspapers
21 in question or that such notice must be in the form of
22 a legal notice to be printed along with other such
23 official notices? Also with regard to the notice, we
24 would strongly suggest ~~that~~ the requirement for mailing
25 within 72 hours to the newspapers is unrealistic. A notice

1 mailed on Friday evening after a decision was reached
2 officially by the public body would not be received in
3 some instances until Monday and subsequent publication by
4 the newspaper would not meet the 72 hour deadline. We
5 would suggest substituting the words "by telephone,
6 telegram or by delivering a written notice." This
7 phraseology does appear on page 3 on line 17. Keep in
8 mind that many official newspapers are weeklies, and notices
9 in such publications could often delay efficient local
10 administration.

11 Our next question concerns the application of
12 the Act to collective bargaining negotiations as provided
13 for in paragraph 6(4) on page 4. When, in fact, would
14 an agreement on a contract be reached? At 3 A.M. after
15 a long and ultimately successful final negotiating session
16 or mediation session, as the case may be, or two weeks
17 later at an official meeting?

18 Our next question concerns the provision appearing
19 on page 5 which relates to the passage of a resolution
20 in those special instances when the public interest
21 would be prejudiced by open discussion. The provision
22 states that the resolution must describe, and I quote,
23 "the general nature" of the subject to be discussed or
24 acted upon. While this would appear to be an ample
25 provision covering those instances where full disclosure

1 would so jeopardize the public interest, are there not
2 many instances where even mention of the subject matter
3 itself would be detrimental? For example, the mere
4 reference to the fact that the public body was going
5 behind closed doors to discuss police protection for the
6 recreation director who had been threatened would, in
7 itself, impede the effective implementation of such a
8 program. Similarly, to publicly state, by way of the
9 resolution that the public body wished to discuss the
10 feasibility of obtaining a public landfill site might
11 seriously and unnecessarily jeopardize negotiations with
12 another landfill operator.

13 Our final question concerns the interpretation
14 of section 7 on page 5 which deals with voiding of actions
15 taken by a public body which are subsequently determined
16 to be in violation of this Act. Our question is actually
17 two-fold: In the event that an action was discussed and
18 agreed upon at a private conference meeting, in violation
19 of the Act, and then subsequently discussed again, reviewed
20 and acted upon at a duly called public meeting, would the
21 terms and conditions of that agreement or act be voided?
22 The second part of the question is this: What would be
23 the effect on innocent parties who proceeded on any number
24 of projects or commitments pursuant to a contract or
25 approval from the public body and then had the agreement

1 or approval voided? Is there any provision for a
2 severability clause as presently exists in most contractual
3 agreements? And finally, would not such a provision,
4 although affording legal relief to the public, create a
5 serious negative effect of discouraging parties from
6 entering into agreements with a public body, since at any
7 time an official action might be challenged and sustained
8 in court as void?

9 It may appear that I have recited a number of
10 petty, technical situations which are not really germane
11 to the main philosophical thrust of this proposed Act,
12 namely, open conduct of government and public participation
13 in the affairs of government. However, I would hasten
14 to point out that examples such as those I cited--and there
15 are many more--are the nitty-gritty of everyday operation
16 of government. To ignore them would do a very great
17 disservice to those who are trying to administer the
18 public's affairs, to those who are doing business with
19 the public, and to the public itself.

20 We have one or two further thoughts of a general
21 nature. Experience has shown that "work sessions" which
22 afford an opportunity for free discussion without fear
23 of being misquoted or quoted out of context are extremely
24 valuable devices for uninhibited exploration of issues. If
25 all discussions must be discussed publicly, as required

1 under this bill, much will go unsaid and unexplored.
2 Public issues will, in fact, be acted upon without the
3 fullest possible discussion. The public will suffer
4 as a result, not gain.

5 We also question whether a requirement at all
6 discussions of public business be open to the public
7 will not place a burden on those members of the news
8 media and the public who desire to fully cover all such
9 deliberations. Many evenings are spend on budget work
10 sessions and many official meetings, which themselves run
11 several hours in duration, are preceded by lengthy
12 preliminary sessions. To fully cover all such meetings
13 would demand virtually every evening and many weekends
14 on the part of those interested.

15 Our conclusion, then, is that the bill, as
16 presently drawn, is commendable in its objectives but
17 short-sighted in its specific application. We suggest
18 thoughtful modification of some of its broad-sweeping
19 definitions and language to provide a workable balance
20 between the public interest and the mechanics of
21 implementing that interest. Thank you.

22 ASSEMBLYMAN HAWKINS: Sir, I want to thank you
23 very much. There will be some questions, but I wanted to
24 comment, I'm sure we don't consider what you said petty,
25 and they may have been technical, but the committee is very

1 interested and that's why we are holding the hearings to
 2 determine what possible technical objections there may
 3 be. We are interested in finding out what problems there
 4 would be if this bill were to be enacted. We thank you
 5 for bringing this to our attention.

6 I have a question. You have pointed out some
 7 very cogent arguments, very specific examples of why
 8 possibly the bill should not be enacted as it is. But
 9 what we are also interested in finding out, are there any
 10 possible alternatives to the wording of the bill. In
 11 other words, is there any definable distinction between
 12 those meetings which should be private and those meetings
 13 which should be public. Can you give us some help in that
 14 area?

15 MAYOR DAVIDSON: The statement I just gave is
 16 on behalf of the New Jersey State League of Municipalities.
 17 Now, this is my personal opinion, and most of you are
 18 under 40. I have been in politics for 21 years, either
 19 as a councilman or a mayor. I'm speaking for the Borough
 20 of Chatham as a mayor, not as the New Jersey State League.

21 Frankly, I don't think you need this bill, or
 22 I don't think we need this bill. You fellows have been in
 23 office for two and a half months now, and I don't think
 24 you have passed very many bills. In the boroughs, cities,
 25 and also in the counties this is going to cause a great

1 deal of confusion. They all say that you're slow, we
2 are slow, the counties are slow in getting things done,
3 and many times the reason we don't get them done is because
4 we have some group potshotting over here, another group
5 potshotting over there, and we don't stand on our own
6 two feet. Think of all the people in this state and in
7 our communities. We don't do the right thing. We listen
8 to those telephone calls we get saying do this, do that,
9 or those many letters from special groups. And, gentlemen,
10 it's going to really slow things up.

11 Mr. Foos, our executive director of the New
12 Jersey League, talked to the executive director of the
13 State of Washington. He said things are in a turmoil
14 out here and we just aren't getting things accomplished.

15 ASSEMBLYMAN HAWKINS: Sir, with reference to your
16 comment about slowing things up, would you consider it
17 more important that we have speed in our public body
18 deliberations, or would you consider it more important
19 that the public be informed in certain circumstances of
20 what their public body--

21 MAYOR DAVIDSON: You have placed a very important
22 word there, "certain circumstances." Last year a bill
23 was put through by the two bodies on pensions for firemen
24 and police on, we'll say, a Wednesday of one week. The
25 next week it was voted upon, and the following week it was

1 signed by the Governor. The municipalities or the public
2 did not have a chance to say anything about the
3 three million dollars it's going to cost the people of
4 this state. They are the things that should bring about
5 deliberations or have deliberations.

6 ASSEMBLYMAN HAWKINS: But back to the original
7 question, sir. Then you agree that there should be some
8 kind of a way that the public might be made aware of what
9 the public bodies are doing; is that correct?

10 MAYOR DAVIDSON: Yes, I do agree with that.

11 ASSEMBLYMAN HAWKINS: But you also stated that
12 there are certain circumstances whereby the meeting should
13 be private.

14 MAYOR DAVIDSON: Exactly.

15 ASSEMBLYMAN HAWKINS: But I am trying and the
16 board is trying to determine, is there any definition that
17 can be given or any way of saying this type of meeting
18 should be private and this type of meeting should be public?

19 MAYOR DAVIDSON: There is, but you're going to
20 have to make this bill twice its size.

21 ASSEMBLYMAN HAWKINS: Can you give us some kind
22 of a hint as to how to do it?

23 MAYOR DAVIDSON: Well, from experience I find--or
24 let's say we have found in the operation of the Borough of
25 Chatham that we can accomplish a great deal by ourselves and

1 then it comes to the public meeting for a vote. Now,
2 maybe that doesn't happen in every municipality. Some
3 people have felt that where there is a split party that
4 people are being neglected.

5 Now, even if you have a one party system, which
6 you have now in the Senate and Assembly, you have the
7 majority, that's what I should say, you can do as you please
8 as far as voting is concerned. And even if there is
9 not a split party, I think that our bodies should have
10 confidence in each other in deciding what is best for
11 every citizen, whether it be the community, the county,
12 or the state.

13 ASSEMBLYMAN HAWKINS: Are there any other
14 questions from the board?

15 Mr. Bate.

16 ASSEMBLYMAN WILLIAM J. BATE (Vice-Chairman):
17 Mayor Davidson, you have come on behalf of the League
18 of Municipalities today. Is it expected there is going to
19 be a statement from the League to supplement your statement
20 today when the deliberations are completed on A-1030?

21 MAYOR DAVIDSON: By the Legislative Committee,
22 I would say yes.

23 ASSEMBLYMAN BATE: Do you think it will come
24 within the next several weeks while the legislature is
25 in session?

1 MAYOR DAVIDSON: They will either meet later
2 this month or the first part of April, if I remember
3 correctly.

4 ASSEMBLYMAN BATE: I gather that you're opposed
5 to this bill in its present form?

6 MAYOR DAVIDSON: Yes.

7 ASSEMBLYMAN HAWKINS: Mr. Gregorio.

8 ASSEMBLYMAN JOHN T. GREGORIO: Mayor, I would
9 like to ask a few questions in an effort to bring out
10 some points that I would like to have brought out as
11 Mayor of Linden to find out if you would have the same
12 problem with this bill as our city would.

13 You meet two or three times a month, your
14 council?

15 MAYOR DAVIDSON: We meet every Monday night.

16 ASSEMBLYMAN GREGORIO: Conference session or
17 public meeting?

18 MAYOR DAVIDSON: Let me go through it. The first
19 Monday is our executive session to discuss what we are
20 going to bring up at the regular meeting on the second
21 Tuesday. The third Wednesday is the Chatham-Madison Joint
22 Sewer Commission. The fourth one is where we meet with
23 our department heads, our committee meetings with our
24 department heads.

25 ASSEMBLYMAN GREGORIO: Well then, except for the

1 dates and whether the conference session is just before the
2 open public meeting, it's almost the same as most small
3 boroughs or small municipalities. Wouldn't you find it
4 almost impossible that the public would have to be excused
5 from the meeting and then invited out because of the fact
6 that in a small city, or perhaps even in large cities,
7 where there are part-time officials that almost everything
8 from a janitor drinking too much or to discussions on
9 labor relations and who is doing a good job and who is
10 not doing a good job and whether a certain department
11 head should be reprimanded?

12 I can think of a million things that might be
13 excluded from this bill, although the basic premise of
14 it might be good. But as a mayor I couldn't even suggest
15 how to word this to make it workable, and I am trying to
16 get you, as a witness, to practically agree with me.

17 MAYOR DAVIDSON: You want me--

18 ASSEMBLYMAN GREGORIO: I'm a sponser of this
19 bill. I sponsered it just to get it out in the public
20 to have discussions like we are having now.

21 MAYOR DAVIDSON: Nothing to do with the League
22 again, but this bill is for the birds.

23 ASSEMBLYMAN GREGORIO: Thank you, sir.

24 MAYOR DAVIDSON: Wait a minute. You fellows
25 sitting up there, would you like me to come to Trenton

1 everytime you go to Trenton and just tag around with you
2 all the time?

3 ASSEMBLYMAN GREGORIO: We have that now.

4 ASSEMBLYMAN HAWKINS: That happens.

5 MAYOR DAVIDSON: Wait a minute now. You couldn't
6 talk to Baer, not at all. I would promise, though, like
7 one group did with Al Mirt, they followed him in the
8 washroom, that's how they got him.

9 ASSEMBLYMAN HAWKINS: It happens, sir. And I
10 can tell you that our judiciary meetings are always open.

11 Assemblyman Spizziri.

12 ASSEMBLYMAN JOHN A. SPIZZIRI: Mayor Davidson,
13 would the Legislative Committee of the League be in a
14 position to suggest areas of change and perhaps propose
15 language of change when they send the report in?

16 MAYOR DAVIDSON: I would say so.

17 ASSEMBLYMAN SPIZZIRI: I would ask they do so.
18 I think it would be helpful to this committee in considering
19 your comments and other comments with reference to this
20 bill.

21 ASSEMBLYMAN HAWKINS: Any other questions?

22 Assemblyman Karcher.

23 ASSEMBLYMAN ALAN J. KARCHER: Mayor, I notice
24 that the first question you had was the definition of a
25 public body.

1 MAYOR DAVIDSON: Yes.

2 ASSEMBLYMAN KARCHER: In the present law as it
3 is presently structured with regard to right to know,
4 here the governor's office is exempt, and also the
5 judiciary is exempt, because of the fact they have
6 certain deliberations which are always in private. We
7 wouldn't ask the appellate division or the supreme court
8 to deliberate in public, for very good public policy
9 reasons.

10 It seems to me that in going through here there
11 are a lot of other questions you raise wherein the
12 municipality or an agency of that municipality are in the
13 same process of fact finding, which is a public function.
14 I give, for example, the Board of Adjustment, the
15 Planning Board, the municipality itself with reference
16 to the responsibility of bidders, as you pointed out here,
17 whether they are qualified or not, the municipalities
18 with regard to liquor licenses, junkyard applications,
19 all of which fall into what is a quasi-judicial function,
20 the finding of facts. And the finding of open facts
21 and then making a determination on those facts is always
22 a judicial function, a quasi-judicial function.

23 Now, do you believe it would be helpful if the
24 municipality and the different branches of it and the
25 different agencies of it were afforded the same protection

1 that the judiciary is afforded, that in deliberation of
2 a judicial or quasi-judicial nature would be exempted?

3 MAYOR DAVIDSON: I would say that would be an
4 advance. But sometimes I wonder why, particularly in this
5 bill, why the judiciary is exempt. You're going over the
6 full gamut and also negotiations as far as labor is
7 concerned. I think labor gets more out of the various
8 small bodies than they would out of a large public body.

9 ASSEMBLYMAN KARCHER: I think you hit the nail
10 on some of your marks on what you say. The reason why
11 it should be exempted. For instance, it wouldn't be
12 fair, certainly, to anyone's interest to debate the
13 credibility of a witness in public. It wouldn't be fair
14 for someone to say, Well, I'm voting against it because
15 I knew that guy was lying. Now, a judge can do that,
16 always can, and nobody asks him, Did you believe him or
17 not believe him. But what this bill will do is force
18 councilmen to make that public that they just didn't
19 believe somebody if they testified. And my suggestion
20 would be there for that kind of reason, as you point
21 out here, that should be excluded.

22 ASSEMBLYMAN HAWKINS: I can suggest another
23 reason why it may be excluded. We are separate and
24 coequal branches of government, and I don't know whether
25 it's constitutional for us and the legislature to tell the

1 governor's office or the judiciary how to run their own
2 meetings. That's the question in my mind.

3 MAYOR DAVIDSON: I'm glad I made you think.

4 ASSEMBLYMAN JOHN P. DOYLE: Not to be argumentative
5 but to find facts. Do I understand you to say that the
6 only way that the public governing body in our municipalities
7 is going to avoid the potshots is to meet in private and
8 to continue the private workshop meetings they have?

9 MAYOR DAVIDSON: Well, this is the age of
10 complaint. Everybody complains. Your wife complains about
11 the high grocery bills and because the car isn't running,
12 and all of your constituents complain. But the majority
13 of the people are not complaining. Think of that.

14 Now, we just passed--this is a little sidelight--
15 on Monday evening, including schools of the county, a
16 \$4,600,000.00 budget. At the end of the meeting I said,
17 How many reporters are here, and there were four or five
18 reporters, and there were three other people in the room,
19 a woman from the League of Women Voters and two other
20 spectators. Now, you must be doing something right, or
21 we must be doing something right. You have to do things
22 that the majority of your constituents believe that are
23 right. That's the point I'm trying to get over here today,
24 and you don't need this thing.

25 ASSEMBLYMAN DOYLE: Do I understand you to say

1 that you would prefer no bill passed, personally?

2 MAYOR DAVIDSON: Personally.

3 ASSEMBLYMAN DOYLE: And you think the way local
4 government, by and large, is operating, as I understand
5 it, one private meeting for every public meeting fairly
6 services the public needs?

7 MAYOR DAVIDSON: Exactly. There is another
8 sidelight. The bill that is before the legislature about
9 disclosure, there are only three groups that want
10 disclosure: the opposite party, your neighbors, and the
11 newspapers. And remember that when that comes up, those
12 three words, or three statements.

13 ASSEMBLYMAN DOYLE: In other words, you take it
14 to mean that the majority of the people have confidence
15 in government and that's expressed by not coming to
16 meetings, so that the meetings should not have to be open
17 to them, anyway?

18 MAYOR DAVIDSON: Exactly. And don't be afraid
19 of not being elected. I have just as many friends
20 Democrats as I have Republicans.

21 ASSEMBLYMAN DOYLE: You mention the chance
22 meeting in the barber shops. The Act says, "'Meeting'
23 means and includes any gathering attended by, or open to,
24 all of the members of a public body, held with the intent,
25 on the part of the members of the body, to discuss or act

1 upon public business." I don't think that would take
2 care of a chance barber shop meeting at which all or less
3 than all of the members of the governing body are invited
4 to.

5 MAYOR DAVIDSON: I forget what your bill says
6 there, but--

7 ASSEMBLYMAN DOYLE: Not my bill. I'm just
8 trying to find the facts, sir.

9 MAYOR DAVIDSON: If two people make a decision,
10 you have a chance of going to court if the other members
11 or the public object to it. That's my understanding
12 of it.

13 ASSEMBLYMAN DOYLE: Do you think maybe the
14 people sit home because they don't think it's been worth
15 going to because the decisions have already been made
16 in private?

17 ASSEMBLYMAN HAWKINS: Is that a possibility?

18 MAYOR DAVIDSON: You disappoint me.

19 ASSEMBLYMAN DOYLE: Sir, I'm just trying to find
20 the facts. I'm not concerned with making you happy or
21 disappointing you. I do not raise the question because
22 I necessarily feel that way, but I think we should develop
23 a full record for the consideration of the bill.

24 MAYOR DAVIDSON: I agree with you. Take all the
25 facts. Let's stand on that remark--

1 ASSEMBLYMAN DOYLE: It wasn't a remark. It was
2 a question.

3 MAYOR DAVIDSON: You have heard that it doesn't
4 do any good, you go in a meeting and raise so much hell
5 and they're going to start thinking, gentlemen.

6 ASSEMBLYMAN HAWKINS: Are there any other
7 questions? If not, thank you very much, sir.

8 MAYOR DAVIDSON: Thank you, gentlemen. It's been
9 a pleasure. Sorry to take so long, but I think you have
10 some of my thinking and you have in printing the League's
11 thinking. And all I say to you is stand on your own two
12 feet, make your own decisions for everybody, not special
13 groups. This bill is for special groups.

14 ASSEMBLYMAN HAWKINS: Doctor Wharton,
15 representing the New Jersey School Boards Association.

16 DOCTOR RICHARD G. WHARTON: Gentlemen, I wish
17 to thank this committee for providing the opportunity for
18 the New Jersey School Boards Association to address itself
19 to A-1030.

20 My name is Dr. Richard Wharton, and I am
21 representing the New Jersey School Boards Association. The
22 school board as a public body is very much concerned about
23 A-1030.

24 I would like to state, Mr. Chairman, that the
25 New Jersey School Boards Association is in agreement that

1 all action must be taken in open public session. In
2 addition, the Association realizes that Watergate has
3 caused basic questions to arise within the public's
4 mind as to the legitimacy of the actions taken by the
5 public officials, that is, the image of smoke-filled rooms
6 or corporate board rooms where decisions are made far
7 from public scrutiny.

8 However, A-1030, as currently written, does not
9 clearly delineate to areas of concern, that is, the public's
10 right to know how public decisions are arrived at and
11 the public body's right to protect public interest through
12 the mechanism of confidentiality. To make this issue
13 more valid, let me initially pose three concrete questions
14 faced by the Board of Education.

15 The first question: May a Board of Education
16 bind itself and its staff to secrecy in the handling of
17 grievances against school personnel, or does the public
18 have the right to know of all complaints made against
19 school personnel?

20 The second question: May the board and the
21 teachers' association make a binding agreement that all
22 progress on negotiations be kept confidential until the
23 final contract has been agreed on?

24 My third question: Is the public entitled to
25 hear all discussions pertaining to a child? Does the

1 public, for example, have the right to hear all the detailed
2 findings of a child-study team at an open meeting?

3 According to our interpretation of A-1030, it
4 would appear that the answers to the above-mentioned
5 questions would be as follows:

6 The answer to question 1. According to Section
7 6B (3), page 4, the public would be excluded from
8 personnel matters. However, the aggrieved party has the
9 right to request a public hearing whether or not the
10 public body desires a public hearing. It is sufficient
11 to note that records containing or constituting privileged
12 matters should not be open to public view, unless the
13 privilege is waived by all parties entitled thereto.
14 The privilege accorded to all parties is a legal mechanism
15 to guarantee equity in a judicial process.

16 In addition, a board of education quite often
17 functions as a grand jury, for example, tenure hearings.
18 As a grand jury, the board of education listens to the
19 statement of charges and rules whether or not the
20 statement of charges is valid and should be brought before
21 the Commissioner. During this period of time, the
22 discussions concerning the grievance and statement of
23 charges are not to be public knowledge. A-1030 would
24 wipe out completely this grand jury function and the legal
25 need to protect the rights of all parties concerned during

1 the judicial process since the aggrieved party has the
2 right to request a public hearing.

3 At this time I would like to say that my
4 cohort has arrived on the scene, gentlemen. This is
5 Mr. Octavius T. Reid, Director of the Governmental Relations
6 Department for the New Jersey School Boards.

7 In answer to the second question, the collective
8 bargaining agreement process, outlined in A-1030, is
9 already protected as to its confidentiality under 10:4-4.
10 In addition, any final decision on collective bargaining
11 agreement must be taken at a public meeting under 10:4-3,
12 and within the educational statutes, 18A:10-6.

13 Some individuals may state that the public
14 decision is a formal rerun of a prior informal arrangement.
15 And I know that some of you are concerned about this. The
16 Association's answer to this belief is that there exists
17 within the body of existing laws court decisions which
18 protect against this abuse. For example, in Kramer v. Board
19 of Adjustment, Sea Girt, 80 N.J. Super. 454, the court
20 stated in its holding: "A resolution recommending the
21 granting of a zoning variance was void for failure to
22 comply with right to know law, where vote of the board of
23 adjustment was taken at an executive meeting in absence
24 of the public and a formal rerun of the board's vote four
25 months later in public did not constitute compliance with the

1 statute."

2 Although the Association recognizes the intent
3 of A-1030 to specify all aspects of public policy, existing
4 statutes and/or court decisions protect the public's right
5 to know.

6 In answer to the third question. As with question
7 number 1, records containing or constituting privileged
8 matters should not be open to public view, unless the
9 privilege is waived by all parties concerned. Even then
10 it should be done within the limits of reason.

11 In order to understand more fully the implications
12 of A-1030 and its effects upon pupil records, I would like
13 to address myself to the following question: the parents
14 of a student enjoy a preferred or privileged position as to
15 the disclosure of information regarding their child's
16 physical, mental and emotional development; but should
17 this privileged position be extended to the general
18 public?

19 N.J.S.A. 18A:36-19 provides the following: "Public
20 inspection of pupil records may be permitted and any other
21 information relating to the pupils or former pupils of
22 any school district may be furnished in accordance with
23 rules prescribed by the state board, and no liability shall
24 attach to any member, officer or employee of any board of
25 education permitting or furnishing the same accordingly."

1 The above quotation requires us to look into the
2 rules and regulations promulgated by the State Board of
3 Education and the Department of Education.

4 Part V of the Rules and Regulations of the
5 State Board of Education outlines certain general rules
6 concerning the inspection of school records. Sections 1
7 and 2 provide that pupil records "may" in the board's
8 discretion be open to inspection by persons who "in the
9 judgement of the board of education have a legitimate
10 interest in the records..." Section 4 likewise provides
11 that information in the records of a given pupil "may"
12 be furnished upon request to employers and institutions of
13 higher learning for purposes of employment or admission
14 to such institutions. By using the word "may," the
15 State Board has left it to the discretion of the local
16 board in all of these cases to determine to what extent
17 the records shall be made available for the purposes
18 indicated.

19 By contrast, Section 3 of Part V of the State
20 Board Regulations sets forth an apparently mandatory
21 provision with respect to inspection of records by a
22 parent or guardian. The section reads:

23 "Items of information contained in the records
24 of a given pupil shall be made available, upon request,
25 for inspection by a parent, guardian or other person having

1 custody and control of the child, or authorized representative
2 of the same, provided, that after the pupil has attained
3 the age of twenty-one years, the items of information shall
4 be made available for inspection by the pupil or his
5 authorized representative, and not to the parent or
6 guardian."

7 However, despite the use of the word "shall"
8 in Section 3, that section must be read together with
9 Section 5 of the same rules, which reads as follows:

10 "Nothing in these rules and regulations contained
11 shall be construed to prohibit the board of education,
12 or any officer or employee of the board designated by the
13 board, to withhold items of information which, in the
14 judgement of the said board, or its designated officer or
15 employee, are of a confidential nature or in which the
16 applicant for such information has no legitimate interest."

17 Sections 3 and 5 taken together would appear to
18 put us right back where we started: the board can withhold
19 items of information which, in its judgement, are of a
20 confidential nature or are of no legitimate concern to the
21 applicant! At the same time, the judgement or discretion
22 of the board must be exercised within the limits of reason.
23 As a general principle, then, individual pupil records are
24 deemed confidential, the board having the right to disclose
25 them only to persons having a special interest in them.

1 A-1030 would not only do away with the privileged
2 status of a parent or guardian but would also circumvent
3 the board's ability from making public "sensitive" pupil
4 records. This would be accomplished by the individual
5 concerned requested in writing public disclosure of
6 confidential records.

7 Some individuals may state that A-1030 provides
8 the privileged status of a parent or guardian and the
9 individual has waived this right through his request for
10 public disclosure. But then, gentlemen, the question
11 becomes, in our minds, does a parent or guardian have this
12 right of waiver? The Association believes that a parent
13 or guardian does not have this right of waiver for the
14 following reasons:

15 First, individual right is being equated with
16 the public right. For example, gradewide test scores and
17 districtwide composite test scores would appear proper
18 concerns for the public at large. They may have a bearing
19 on the effectiveness of the education program and the
20 quality of the teaching in the particular class or throughout
21 the district. But an individual student's test scores are
22 the legitimate interest of the parent and should not become
23 public knowledge.

24 Secondly, records of the pupil's character
25 development would likewise be within the parent's right to

1 know for the same reasons as given with respect to the
 2 pupil's academic performance. This kind of information
 3 should not be divulged publicly for the protection of the
 4 child's reputation and on the theory that he should be
 5 constantly "growing up" and that any misconduct during
 6 the process should not be held against him. And I would
 7 like you gentlemen to look at the case that came before
 8 the Commissioner, and you notice that they refer to
 9 the person as E. E. v. Ocean Township Board of Education,
 10 decided March 9, 1971, in which the Commissioner directed
 11 that no notation of a pupil's discipline infractions
 12 should be placed on his permanent record. And this was
 13 for his protection. Now, if the parent says he wants to
 14 waive that right, it would become automatically public
 15 records.

16 Third, many boards now keep numerous technical
 17 records of examinations and tests for various types of
 18 physical, mental and emotional disorders or handicaps
 19 from the general public for the following reasons:

20 (a) Much of the material would be incomprehensible
 21 to the average layman and might serve only to alarm or
 22 confuse the general public;

23 (b) Often the material gathered in such tests
 24 needs to be interpreted by qualified psychologists, etc.,
 25 and the interpretation may be all important in the diagnosis

1 and treatment of the child;

2 (c) What the parent really needs is not to
3 necessarily examine the details of tests and reports given
4 by professionals, which may often be either blunt or even
5 offensive to the parent, but rather the considered conclusion
6 and recommendations, presented to the parent in such a way
7 as to best secure the cooperation of the family in the
8 attempt to overcome disorder or handicaps. For all these
9 reasons, it seems well within the prerogative of the board
10 to limit rather strictly the disclosure of records in this
11 area.

12 Thus far, I have addressed myself to the broad
13 concepts of the public's right-to-know and the public body's
14 right to confidentiality in certain instances. I have
15 also stated the difficulties faced by boards of education
16 if A-1030 were to become law.

17 At this point, gentlemen, I would like to point
18 out certain technical deficiencies which would drastically
19 affect the legal interpretation of A-1030. I am glad
20 to hear that the committee has found some of the technical
21 difficulties, and I will go through them, and I realize
22 that some of them, in all likelihood, will be a repeat
23 of some of the findings of this committee. So I would
24 ask your indulgence as I go through the technical
25 deficiencies.

1 The technical deficiencies perceived by us are
2 as follows:

3 (1) Page 2, line 13, "clearly endangered":
4 What does this phrase mean? When is the public interest
5 "clearly endangered"? Who decides that the public interest
6 is "clearly endangered"? This nebulous term would certainly
7 have to be eventually decided by the courts.

8 (2) Page 2, line 10, "all meetings of public
9 bodies": Does this mean all committees and subcommittees
10 of public bodies? Let us assume that it does. With
11 boards of education, the individual committees function
12 as investigatory bodies, for example, school construction,
13 school budget. These committees cannot take action except
14 to recommend to the entire board of education certain
15 action to be taken based upon the facts gathered by them.
16 Under this phrase within A-1030 these committees could
17 conceivably have to be open to the public's scrutiny. This
18 may affect the investigatory effectiveness of the committees
19 if all of their meetings are public regardless of whether
20 or not a decision is made. And under 18A all board meetings
21 are open. A board cannot make the decision unless it has
22 a full quorum. Subcommittees and committees like in the
23 legislature can only make recommendations. So if you're
24 opening the committee's meeting, what is this doing? You
25 may say that it's giving initial input. But under 18A

1 input can be given to the boards of education at the public
2 meetings.

3 The third deficiency. Page 2, lines 21 through
4 23, "preparing agenda": This provision would mean public
5 attendance at the preparation of a board's agenda by the
6 President, Vice-President and Superintendent. This function
7 of agenda preparation is to give some sort of cohesion
8 to the public meeting. In addition, there is always a
9 segment of the board meetings at which the public is able
10 to address itself to items which are not on the agenda.
11 More importantly, the question inherent in the preparing
12 of an agenda is whether or not the public body, duly
13 elected or appointed representatives of the public, is
14 empowered to prepare an agenda? It would appear from page
15 2, lines 21 through 23, that the public body does not have
16 this right.

17 The fourth deficiency. Page 2, subsection E,
18 "adequate notice": Currently, boards of education are
19 required by 18A:10-6 to give adequate notice, and I quote:

20 "The board of education shall cause notice of
21 such public hearing and the statement annexed to the budget
22 to be published at least once in at least one newspaper
23 published in the district and if no newspaper be published
24 therein, then at least one newspaper circulating in said
25 district not less than seven days prior to the date fixed

1 for such public hearing."

2 Reading further on in 18A:22-13:

3 "On the date and at the time and place, so fixed,
4 the board of school estimate or the board of education,
5 as the case may be, shall hold such public hearing at
6 which the taxpayers and other interested persons shall have
7 an opportunity to present objections and to be heard with
8 respect to said budget and the amounts of money necessary
9 to be appropriated and the various items and purposes for
10 which the same are to be appropriated for the use of the
11 public shcools in the district for the ensuing school year."

12 A-1030 would reduplicate many of the current
13 provisions within N.J.S.A. 18A. But more importantly,
14 under Section 4B, page 3--meeting without notice--lack of
15 adequate notice carries a disorderly person's penalty.
16 The questions which immediately come to my mind are: Who
17 decides that substantial harm has been done to the public
18 through lack of adequate notice? And who decides that the
19 public body has acted in such manner to be penalized? The
20 Superior Court or the public body?

21 The fifth technical deficiency. Page 5, line 1,
22 "shall be void": Under 10:4-5 official actions are
23 voidable based upon proceeding in the Superior Court. By
24 stating in A-1030 that official actions shall be void, it
25 means that all actions, without Superior Court proceedings,

1 are null. Thus, a public body could conceivably not have
2 a legal standing before the Superior Court. Furthermore,
3 what happens to contracts? Or where is the statute of
4 limitations?

5 There are other technical deficiencies within
6 A-1030, and I know that you have addressed yourselves
7 to them, and I would like to point out in passing very
8 quickly some of them. Page 2, lines 27 through 31: Are
9 the proceedings of the New Jersey School Boards Association
10 Workshop considered discussions by public bodies which
11 the public must attend? Or page 4, line 1, which refers
12 to subsection C which does not exist in A-1030.

13 I would like to thank you very much for being
14 so patient listening to my statement, and I would like to
15 conclude with this remark: I would like to state that the
16 New Jersey School Boards Association opposes A-1030 for the
17 reasons enumerated in my statement. To quickly review them,
18 the points are:

19 (1) A-1030, as currently written, does not
20 clearly delineate the public's right to know and the public
21 body's right to protect public interest through the
22 mechanism of confidentiality.

23 (2) Records containing or constituting privileged
24 matters should not be open to public view, unless the
25 privilege is waived by all parties entitled thereto. A-1030

1 does not make this provision. Irreparable damage could
2 be done to reputations and futures of persons who may
3 be the subject of privileged records.

4 (3) N.J.S.A. 18A already provides the public's
5 right to know. A-1030 would either be a reduplication
6 or in conflict with N.J.S.A. 18A in many instances.

7 (4) The term "void" circumvents the right of
8 any individual or group of individuals to a day in court.
9 In addition, the on-going operations could be hampered.
10 Rather than opening the system to public scrutiny, making
11 its decisions accountable to the public, it may happen
12 that there may be no decisions which, in turn, makes
13 the system non-operational.

14 Mr. Chairman, I wish to thank you and the
15 committee members for providing me with the opportunity
16 to present our concerns on A-1030. It would appear,
17 in my humble opinion, that chapter 173 of the laws of 1960,
18 which A-1030 is attempting to amend or do completely
19 away with, and the new assembly rules are working effectively
20 If not, I don't think we could have presented our testimony
21 here today. Thank you again.

22 ASSEMBLYMAN HAWKINS: Dr. Wharton, I thank you
23 very, very much for a well prepared presentation.

24 I have a question. Is it your personal opinion
25 that there is a problem with that fourth summation, the

1 term "void"?

2 DR. WHARTON: According to our legal department,
3 there is a difference. Not being a lawyer, I can't tell
4 you the difference. But they said there was a difference
5 between the word "void" and "voidable."

6 ASSEMBLYMAN HAWKINS: That's very correct. But
7 I'm trying to determine if there is a problem presented by
8 that difference.

9 DR. WHARTON: Well, according to our legal
10 department, yes, there is. Because according to them--

11 ASSEMBLYMAN HAWKINS: What is the problem?

12 DR. WHARTON: Because by stating it is void, that
13 means the action is dead, completely.

14 MR. OCTAVIUS T. REID: There is no chance for
15 appeal within the courts.

16 DR. WHARTON: There is no chance for appeal within
17 the courts.

18 ASSEMBLYMAN HAWKINS: I am not entirely sure that's
19 correct.

20 I can give you an example. We have in our law
21 a provision that states a marriage between two parties relate
22 in a certain manner, for instance, a mother and a son, is
23 termed to be void, and that's void from the beginning. And
24 we have in our law provision that a marriage between a party
25 that's already married and another person is void, but yet

1 that doesn't say that can't go into a court and have it
2 declared void. And that doesn't say that that court
3 decision can't be appealed.

4 DR. WHARTON: True. But perhaps the reason that
5 the examples you gave me may be applicable is because
6 through custom and usage the type of relationship where
7 a person marries someone who is a relative is automatically
8 considered to be void as if not having taken place, because
9 the contract could never have been done based upon the
10 historical usage in this relationship.

11 Within this law, which is a little more nebulous,
12 where there is no clearly defined guidelines by which you
13 are able to tie on to see whether something is void or
14 voidable, we like to use the term voidable so that perhaps
15 actually the law can be made better through court
16 proceedings.

17 ASSEMBLYMAN HAWKINS: But is it a possibility
18 that just by using the terminology voidable that we are
19 giving the courts the discretion that we may not want to
20 give them?

21 MR. REID: By saying voidable, you're suggesting
22 that both parties would have to raise the issues and the
23 issue would have to be decided on its merits, the onus is
24 on them, the action is wiped out.

25 ASSEMBLYMAN HAWKINS: But is there a problem in

1 placing the onus on--

2 MR. REID: It would seem in a contractual
3 situation that would be a very difficult problem. If one
4 assumes that there is the possibility of an inadvertent
5 action rather than a deliberate action by a public body
6 in an attempt to bypass its right to public view of its
7 actions, and through some technicality and procedure finds
8 its actions voided, in which case it has to go through
9 a court proceeding, but at the same time has to continue
10 and get obligations for payments, say, on a construction
11 contract, then during the course of the time that it's
12 trying to get a determination as to whether or not its
13 actions are void, it's also violative of another statute
14 which says it's not honored in the contract. So it could
15 be sitting in that precarious kind of ground in complying
16 with one law being in violation of another. That would
17 be our concern there.

18 ASSEMBLYMAN HAWKINS: Any other questions?

19 ASSEMBLYMAN DOYLE: You mentioned, and I think
20 very rightly, the areas of grievances and the children,
21 which may well be deserved exceptions. There are a number
22 of other things that a board does, whether they apply or
23 accept for federal program, use of school buildings for
24 other people, curriculum, just to name a few examples.
25 Would you not think that A-1030 would serve a useful purpose

1 insofar as those items are concerned?

2 MR. REID: Yes, it would.

3 DR. WHARTON: Yes, it would, right.

4 ASSEMBLYMAN DOYLE: And is not your experience
5 that most boards of education hold one private hearing
6 for one public meeting?

7 MR. REID: We sometimes hold three and four
8 meetings for one public meeting.

9 ASSEMBLYMAN DOYLE: Hasn't the final decision
10 been arrived at as far as the boards are concerned by the
11 time you come to public meeting?

12 MR. REID: Very practically in some cases, yes;
13 in some cases, no. This varies across the state with
14 various boards. Usually, what goes on during the course
15 of a conference meeting is an attempt to explore the facts,
16 finding out what you want to do and making a determination
17 as to whether or not it goes on the agenda.

18 ASSEMBLYMAN DOYLE: Most areas cited in your
19 very able statement, do you think that the presence of
20 members of the public at those kinds of discussions would
21 harm those discussions or inhibit them?

22 MR. REID: No, I do not. I think some
23 individuals would feel inhibited, but I think it would be
24 to the public's best interest to have it that way.

25 I think we should, perhaps, clarify that while

1 saying that we oppose it--that was Dick's last statement--
2 for the reasons enumerated, that's the same thing as
3 saying that we support the intent of the bill. But there
4 are some particular provisions in it that present
5 difficulties, and once those are taken care of I don't
6 think we are in disagreement with what you're attempting
7 to do.

8 ASSEMBLYMAN DOYLE: In the collective bargaining
9 process, you say the existing law provides that that would
10 stay closed and the proposed law doesn't add much. Let me
11 take you back one step further. I don't think that the
12 board's position in collective bargaining really is raised
13 that their budget workshop meetings by the amount of
14 money they put in the instructional accounts.

15 MR. REID: Yes, it is.

16 ASSEMBLYMAN DOYLE: Shouldn't that be closed for
17 the protection of the board for the--

18 MR. REID: Yes, we believe that. That would be
19 the same thing. Both the boards and bargaining units usually
20 agree to it for the sake of protection, anyway. But the
21 boards would be in the position of exposing what they have
22 as available resources and then having to sit down with the
23 negotiating units and saying, This is what we are willing
24 to offer, when they have had the perfect opportunity to
25 see what your ultimate offer would be. And that certainly

1 changes the balance there.

2 ASSEMBLYMAN DOYLE: You raised a good point about
3 the statute of limitation. The rules of court provide
4 that most public acts, if you're going to challenge them
5 by suit in lieu of prerogative writ, you have to commence
6 that suit within 45 days. Would that be an appropriate
7 limitation if that were made applicable to voiding meetings
8 for not complying with this law?

9 MR. REID: I think that would be reasonable.

10 ASSEMBLYMAN DOYLE: Thank you.

11 ASSEMBLYMAN HAWKINS: Assemblyman Codey.

12 ASSEMBLYMAN RICHARD JAMES CODEY: Dr. Wharton,
13 on the first page of your statement you state about the
14 public's right to know and the right of privacy. Are they
15 in conflict in this bill, as far as you're concerned?

16 DR. WHARTON: In certain instances, yes. That's
17 why we were addressing ourselves to the concrete questions
18 at the beginning, dealing with aggrieved parties, dealing
19 with pupil records, and so forth; that if this could be
20 cleaned up, I think that what would happen is that there
21 would not be a conflict between the public's right to know
22 and the need for the public's right of confidentiality
23 in certain instances.

24 ASSEMBLYMAN CODEY: It seems to me throughout the
25 case that the right to know and the right to confidentiality

1 are in conflict. You mention about grievances and about
2 school personnel. As it stands now, grievance against
3 any person employed by the board of education, are those
4 grievances now a matter of public record?

5 DR. WHARTON: In many instances.

6 Maybe Mr. Reid could answer better, since he is
7 our board president and has dealt with these things.

8 MR. REID: The grievances in themselves are, but
9 the contents of them are not. During the proceeding of the
10 boards or its administrative staff and the teacher filing
11 the grievance, those proceedings are not public, and for
12 good reason.

13 ASSEMBLYMAN CODEY: Would you envision, say,
14 someone making a complaint against an employee knowing that
15 maybe the complaint is not justified, but if it were open
16 that the person making the complaint against the board
17 that it would embarrass him and harm his prestige or his
18 position?

19 MR. REID: I should think for any individual,
20 if any one of us wanted to personalize, that if we were
21 being faced with an accusation that was totally unfounded
22 that the fear of embarrassment would certainly be a lot
23 less than the desire to exonerate yourself. Remember, also,
24 when you go through the hearing procedures they're
25 automatically public records once they reach the commission

1 hearing, so that you can have your day in court then.

2 ASSEMBLYMAN CODEY: What determines whether
3 they reach the Commissioner or not?

4 MR. REID: Whether or not the party filing the
5 grievance is satisfied with the findings.

6 ASSEMBLYMAN KARCHER: Conversely of that, the
7 board of education under the present law--and I notice
8 you use the analogy to a grand jury--if the board of
9 education feels it's necessary to either discipline a
10 teacher or to discipline a custodial employee, et cetera,
11 once again, those hearings before the board of education
12 are only of the first instance and they must be referred
13 to the Commissioner for ultimate determination; isn't
14 that correct?

15 MR. REID: That's assuming the individual wants
16 to pursue it that far.

17 See, in effect what happens, while the board
18 is disciplining that teacher, they're actually doing it
19 on the basis of administrative recommendation. Their
20 administrative staff made an evaluation. That teacher
21 would not be aware of the fact that the board has not
22 heard their side of the story. So when a board holds
23 a hearing, it's saying we acted on the basis of our
24 chief executive officer's recommendation, but if you wish
25 to come in here, tell us your side of the story directly,

1 we would be willing to do that. At that point if they are
2 dissatisfied they can pursue it through the Commissioner.

3 ASSEMBLYMAN KARCHER: I have been involved in
4 litigation on this point, and my understanding was that,
5 for instance, a teacher, in a hypothetical, or a custodial
6 employee, drunk and disorderly, or something, the board
7 would like to have him ten days off, unpaid. The board
8 cannot do that by itself under the present law; isn't that
9 correct? The board can have a hearing and refer those
10 charges to the Commissioner of Education, right?

11 MR. REID: Right.

12 ASSEMBLYMAN KARCHER: In that instance, the
13 employee would have nothing to say about it. It would not
14 be at his discretion.

15 DR. WHARTON: That's right.

16 ASSEMBLYMAN KARCHER: And in that proceeding the
17 board of education is functioning as a grand jury.

18 DR. WHARTON: Correct.

19 MR. REID: We are talking about two distinct
20 categories. One would be one that affects the tenure status
21 of an individual, which would be reduction, suspension,
22 dismissal, or decertification; the other has to do with the
23 whole concept of administrative charges, which are handled
24 at an administrative level.

25 ASSEMBLYMAN KARCHER: I'm talking about a larger

1 picture, which would either affect a custodian's rights of
2 tenure or a teacher.

3 MR. REID: Right.

4 ASSEMBLYMAN KARCHER: And the individual employee
5 has no discretion of whether those charges will be sent
6 to the Commissioner of Education or not.

7 MR. REID: In effect, neither does the board,
8 because once it has the obligation, it has the obligation
9 to certify the charges and then have it heard.

10 ASSEMBLYMAN KARCHER: The hearing would be public.
11 Whereas, as it presently functions you actually do function
12 as a grand jury and it's a privileged hearing; isn't that
13 correct?

14 MR. REID: That's right, in the determination as
15 to whether or not to certify the charges.

16 ASSEMBLYMAN KARCHER: Under this present proposed
17 legislation there is another quasi-judicial function
18 becoming public.

19 MR. REID: Except that the final vote is done in
20 public.

21 ASSEMBLYMAN KARCHER: I'm talking about the
22 deliberations, as to whether in fact probable cause exists.

23 MR. REID: But I would raise a serious question
24 as to whether or not you want that discussion to be public.

25 ASSEMBLYMAN KARCHER: I raise the same question.

1 MR. REID: It seems to me--I am not that familiar
2 with the present grand jury system, but while they are
3 hearing evidence to determine whether or not they should
4 hand down an indictment, if it is public at that point it
5 seems to me that you then prejudice the case of the
6 individual, and that's something we would be concerned
7 about. It seems to me the newspapers refer to it as
8 pretrial publicity, and you would be trying the person
9 by innuendo without giving them the opportunity to present
10 the other side, and we would be opposed to that.

11 ASSEMBLYMAN HAWKINS: Isn't it a fact that news
12 frequently leaks to the press that someone has been
13 indicted?

14 MR. REID: There is a big difference between news
15 leaking to the press and an official body saying, Here is
16 the evidence and we are looking to see if it is sufficient
17 cause to certify charges to be heard by a hearing officer.
18 There is a lot more weight to that than some innuendo or
19 passing rumor. Why should we jeopardize anyone until they
20 have had the right to defend themselves.

21 ASSEMBLYMAN HAWKINS: Any other questions?

22 Hearing none, I wish to thank both of you
23 gentlemen very much.

24 DR. WHARTON: You're quite welcome, sir.

25 ASSEMBLYMAN HAWKINS: Mr. Raymond A. Hayser,

1 Director of Law of Dover Township.

2 RAYMOND A. HAYSER: Thank you, Mr. Chairman.

3 I understand that Assembly Bill 1030 has
4 ramifications on all levels of government with the State
5 of New Jersey. But as Director of Law of Dover Township,
6 Ocean County, New Jersey, and as an attorney who has
7 previously served three municipalities of the State of
8 New Jersey, I will limit my remarks to the possible effect
9 of this bill as it is written upon municipal operations
0 and, particularly, the township that I represent this
1 morning, Dover Township.

2 I would like to present to the committee and
3 ask that it be included in the record a certified copy
4 of a resolution adopted by the township committee at its
5 regular meeting this past Tuesday, March 12. It is a
6 resolution opposing the adoption, authorizing the township
7 attorney to oppose the Public Meetings Act as presently
8 written, and I stress as presently written. I ask that this
9 be included in the record.

0 The Township Committee has requested me to
1 amplify for this Committee the considerations expressed
2 in its resolution of March 12, 1974. In this regard, the
3 Township Committee wishes to make the following points
4 concerning its objections to the present wording of
5 Assembly Bill No. 1030:

1 1. It recognizes and supports the fundamental
2 right of public meetings with adequate notice to the
3 public. The public has both a right and responsibility,
4 both of which many people rarely consider, unlike many
5 private interest groups, to influence governmental processes,
6 and decision making.

7 2. There may be legitimate circumstances for the
8 convening of "emergency" public meetings, in order to meet
9 the sometimes unknown and unpredictable immediate needs
10 of a functioning government, but safeguards as proposed
11 in Sections 4b and 5b of the proposed bills are compatible.

12 3. There is a need to assure, as this proposed
13 bill does in part, to subject autonomous agencies, boards
14 and bodies to the same requirement of public meetings,
15 which though such a requirement should be readily apparent
16 heretofore, practice often proves different in the
17 activities of autonomous agencies.

18 4. The Township Committee supports the public's
19 right to know and have full recourse to information as to
20 public meetings, only during which proceedings the public
21 will and the public pocketbook can be bound, in regard
22 to making available public meetings agenda, minutes and
23 certified copies of ordinances and resolutions.

24 5. The Township Committee recognizes the
25 responsibilities of adhering to the provisions of the Local

1 Public Contracts Law of New Jersey, R.S. 40A:11-1 et seq.,
2 and the Local Lands and Buildings Law of New Jersey,
3 R.S. 40A:12-1 et seq., particularly as to the requirements
4 of public advertisement, especially as to the awarding of
5 "emergency" and "professional services" contracts, areas
6 which I would suggest to this committee may not be
7 considered today, but it might be appropriate to consider
8 guidelines and regulations and further study in this area
9 since it seems to be an area of growing controversy, the
10 areas of emergency meetings and the area of professional
11 service contracts and how they are awarded.

12 6. Finally, the committee realizes the fact that
13 a governing body that is secretive, abusive or unwilling to
14 permit proper public participation in governmental processes
15 will not be a governing body that governs long, with the
16 right of a taxpayer to seek legal redress through the courts,
17 in the time and manner provided by statute and court rules,
18 and the less individually costly but potentially and recently
19 more devastating processes of law enforcement investigation
20 and public elections and recall petitions, aided by civic
21 minded groups and a responsive press.

22 Having said all these things, the Township Committee
23 must raise certain questions concerning the language and
24 intent of proposed Assembly Bill No. 1030: one philosophical,
25 one practical, and one legal.

1 Philosophically, as already indicated, the
2 Township Committee has no quarrel with the public's right
3 to attend and participate in a "public meeting." However,
4 the intent of the proposed Assembly bill appears obvious
5 from the following excerpt of its attached statement:

6 "The public's right to know the true source of
7 governmental decisions and to witness in full detail the
8 process of public policy formulation is frequently obstructed
9 by the inability of members of the public and the press
10 to attend certain policy-making sessions of public bodies.
11 This bill would put the conduct of public business on an
12 entirely open basis by requiring all discussions and
13 decisions of public bodies, including those now held or
14 made in 'executive sessions,' to take place at meetings
15 open to the public and for which adequate notice has been
16 given."

17 We believe that the language of this proposed
18 Assembly bill was born out of the frustrations of current
19 events which have seen government processes corrupted by
20 secret transactions and informal transactions, and the
21 growing distance and feeling of impotence between
22 individual citizens and those governmental entities, in
23 which citizens have neither trust nor confidence.

24 However, might not this proposed Assembly bill be
25 an overreaction to a serious problem and be as potentially,

1 if not more so, dangerous to the public interests? That is
2 to say, may there not be a real value to "executive
3 sessions" and caucuses of the governing body, particularly
4 on the municipal level?

5 Many of the members of this Judiciary Committee
6 have served in the legislative or executive branches of
7 municipal government, including the following:

8 1. Assemblyman William J. Bate, Clifton council-
9 man, during 1966-69;

10 2. Assemblywoman Gertrude Berman, Long Branch
11 councilwoman and council president, during 1969-74;

12 3. Assemblyman Richard James Codey, Orange
13 Board of Adjustment and Shade Tree Commission;

14 4. Assemblyman John T Gregorio, Linden Mayor and
15 councilman, during 1964-74;

16 5. Assemblyman Eldridge Hawkins, East Orange
17 assistant city counsel, with whom I served; and

18 6. Assemblyman John A. Spizziri, Wyckoff Township
19 Committee member and mayor, during 1966-72.

20 Simply stated, based upon individual experiences,
21 each of you can and should appreciate the value and
22 necessity for informal discussions to air views and
23 compromise competing viewpoints, free of the concern to
24 maintain rigid and demagogic views for press or public
25 consumption, in order that government can continue to

1 function without the fabric of society being needlessly torn
2 by the inability to reach a consensus.

3 This does not mean that decisions should be and
4 can be made in private meetings with no recourse to the
5 public will. Rather, it is clearly the law in New Jersey
6 that official decisions of a municipal governing body
7 can only be made at public meetings with the public right
8 to be heard. In this regard, please see R.S. 10:4-1 et seq.
9 R.S. 40:49-1 et seq. An understanding reached at a
10 caucus is nothing more than a gentlemen's agreement as to
11 how an official might vote at a subsequent public meeting
12 of the local governing body. This citation appears in
13 Brazer v. Borough of Mountainside, 102 N.J. Super. 497.

14 Of course, no one is foolish enough to believe
15 that minimal conformity with the public meetings require-
16 ment of the proposed Assembly Bill will assure full
17 disclosure and avoid private dealing anymore than minimal
18 and superficial conformity with bidding procedures
19 under the Local Public Contracts Law of New Jersey will
20 guard against unscrupulous circumvention of awarding
21 public contracts.

22 There is an obvious intent in some of the
23 language of this proposed Assembly Bill which evidences
24 an attitude that strikes at the very heart of a
25 representative government, and one that I take great

1 exception to, and that is that we simply can't trust our
2 elected officials, whether we subscribe to the delegate
3 or agency theory of government, and must constantly look
4 over the collective shoulders of our elected officials.
5 Carried to an absurdity, we do not have representative
6 government.

7 While this may be an interesting populist
8 theory, in the real world the ability to caucus and reach
9 compromises and settlement can serve to further rather
10 than negate responsible government action.

11 It is true that Section 6(b) of A-1030 outlines
12 some areas and issues not requiring public involvement,
13 but the Township Committee would prefer to see some
14 language in this bill recognizing the validity of the
15 caucus and executive session for discussion purposes,
16 recognizing that no official act by a governing body
17 may be taken at same.

18 There is a practical problem to the administration
19 of this bill, and that is how you separate the public
20 as distinct from the non-public business as provided in
21 Sections 3(c) and 6(b) of the proposed Assembly Bill,
22 so that as a practical matter you can plan public and
23 non-public sessions or meetings or parts thereof of a
24 governing body to comply with this proposed legislation.
25 I know that as a practical matter agendas contain varied

1 and distinct items and are prepared at meetings, caucuses
2 or conferences where public and non-public and
3 confidential matters are discussed in unison, since there
4 are only so many meetings that can be scheduled in a
5 given day, week or month with adequate preparation. I
6 can foresee having to give a legal opinion to each
7 elected official on each item that may be even suggested
8 or inferred at a meeting for even future consideration.
9 Really, the result might be a paralysis of governmental
10 action.

11 In this regard, nothing aids the innate
12 development of fear and paralysis in an elected official
13 trying to do his job, and who may not be trained in the
14 law, than the penal aspect of this bill coupled with
15 some generalized definitions. In this regard, the following
16 sections of the proposed Assembly Bill must be considered
17 by the committee:

18 Section 9: "Any person who knowingly participates
19 in a meeting of a public body of which he is a member,
20 not held in accordance with the provisions of this Act,
21 is a disorderly person."

22 Section 3 b.: "'Meeting' means and includes
23 any gathering attended by, or open to, all of the members
24 of a public body, held with the intent, on the part of
25 the members of the body, to discuss or act upon public

1 business."

2 Section 3 c.: "'Public business' means and
3 includes all matters acted upon or discussed by a public
4 body which relate in any way, directly or indirectly, to
5 the performance of its functions or the conduct of its
6 business."

7 Section 3 d.: "'Act upon or discuss' means
8 and includes the discussion and voting upon motions,
9 resolutions, rules, regulations, policies, ordinances
10 and statutes; discussion as to whether or not any of the
11 same shall be adopted or acted upon or placed on the
12 agenda of the public body for present or future action;
13 discussion or action pertaining to the procedures to be
14 followed by the public body in conducting any meeting,
15 or any hearing in a hold or propose to hold, or the
16 procedure to be followed by it with respect to any matter
17 coming before it; discussions which relate in any way to
18 the taking or not taking of any public body or any of its
19 agents, employees, committees or agencies; and discussions
20 or actions which relate in any way to the governmental
21 functions for which the public body was established."

22 In this regard, the central issue becomes, from
23 a legal and penal standpoint, what constitutes a "meeting"
24 which the public could or should be invited to attend?
25 Can an informal discussion by elected officials at a social

1 event of any governmental or political matter, which if
2 you ask them to refrain from is like asking many not
3 to breathe, be considered something which the public has
4 a right to participate in, and if not, why not?

5 The Township Committee is of the opinion that
6 the provisions of R.S. 10:4-3, making it a misdemeanor
7 for any public official to bar the public from public
8 meetings, and not caucuses, where the public business may
9 only be acted upon, is sufficient protection for the public's
10 right to be informed, coupled with the citizen's right to
11 resort to judicial redress--and in this regard Section 7b
12 and 8 of the proposed bill deal in a manner in which it
13 is presently--and the electoral process, which is the
14 ultimate in dealing with a non-responsive and secretive
15 governing body.

16 It is further proposed that Section 7a be amended
17 as follows, in line with existing case law:

18 "Any action taken by a public body at a public
19 meeting which does not conform with the provisions of this
20 Act shall be void."

21 As to the ability of the press to be informed,
22 I have never met an elected official who ever was shy about
23 discussing the public business, even following a caucus
24 where the magic words were spoken by the chairman, "Please,
25 let's not let this discussion go beyond this room until we

1 have our public meeting."

2 The Township Committee asks that you consider
3 the adoption of A-1030 very carefully and whether in
4 its present form it really helps local government.

5 If I might be able to expand upon these remarks.
6 Two comments that were made by members of the committee
7 this morning, really in the form of questions, and one
8 was: I think the chairman asked for a point of distinguishing
9 between a public and a private meeting. I would say, if I
10 was to give a definition of that on my own, the private
11 meeting is the caucuses and they should remain closed
12 unless the governing body in its discretion for informational
13 or other purposes wishes to invite and include members of
14 the public, since no official acts by a municipal
15 governing body can be made at a caucus. The public
16 meeting is where the public has a right to participate.
17 I would support guidelines and restrictions on the type
18 and form of notice that has to be given to the public
19 and the right to participate by the public in these
20 meetings, so that we don't have the sham, as I have seen.
21 And I can give you an example. I have said I have served
22 in four municipalities and I have seen agendas prepared
23 for meetings and I have seen agendas where they might list
24 on it award for listing professional service contract. Of
25 course, the resolution isn't included, and you have no way

1 of knowing whether it's an award of a professional service
2 contract for \$2,000.00 or for \$50,000.00 or who it is
3 awarded to or to what official.

4 So we would seriously consider, and it would be
5 advised by guidelines and considerations and requirements,
6 as to the type of notice and the type of procedure that
7 has to be followed at public hearings so that the public
8 does have a right to know fully what is happening, and
9 secondly, the right to influence it at the sessions.

10 I have never served in a municipality where there
11 has not been a vocal and active public interest shown
12 at the meetings, and I dare say that it's been a rare
13 experience to see debate when there has been sufficient
14 interest in a matter cut off indiscriminately by the
15 governing officials.

16 I want to thank the committee for allowing me
17 to make these remarks this morning.

18 ASSEMBLYMAN HAWKINS: Thank you.

19 Any questions?

20 ASSEMBLYMAN DOYLE: Just for the record, I think
21 Mr. Gallo serves as president of the Hoboken City Council;
22 and Mr. Karcher has municipal experience, and his father
23 before him.

24 MR. HAYSER: My sources stand corrected, and I
25 apologize to both gentlemen.

1 ASSEMBLYMAN KARCHER: Mr. Doyle is township
2 attorney in Brick Township.

3 ASSEMBLYMAN DOYLE: You say, as some witnesses
4 have said, that you support the right of public information
5 and the public to know what is going on, but not the
6 language of this bill. I really question whether the
7 Township Committee--and I have had a discussion at length
8 of this bill with your mayor, taking differing positions
9 to some degree--really means that.

10 Let me digress a little bit. The resolution that
11 was adopted by the Township Committee in Dover, was that
12 authorized at one of these workshop meetings?

13 MR. HAYSER: This resolution was authorized at
14 a conference committee. The committee met twice a month
15 in public session and twice a month in conference to plan
16 its agenda. It was reviewed by the committee itself.
17 Copies of it were forwarded to me before my appointment.
18 It was then brought up at a public meeting, which was
19 discussed by the public and the Township Committee at the
20 meeting before it was adopted. That is correct.

21 ASSEMBLYMAN DOYLE: So there was some discussion
22 on this resolution at a public meeting.

23 MR. HAYSER: Yes.

24 ASSEMBLYMAN DOYLE: You say all that happens is
25 at a caucus meeting is a gentleman's agreement.

1 MR. HAYSER: I don't say that. Case law says
2 that.

3 ASSEMBLYMAN DOYLE: Isn't it often the case
4 that a public body will have a workshop meeting, and at
5 that workshop meeting ask the attorney for his opinion
6 of a suggested type of ordinance; and he furnishes the
7 body with that opinion. And based upon the opinion, they,
8 therefore, ask him at a second private session to draft
9 an ordinance, which they at the next public meeting pass
10 on first reading at which there is no public discussion
11 and, thus, commission it to be advertised--

12 MR. HAYSER: Can I interrupt one point there.
13 You have probably attended meetings of the Dover Township
14 Committee. They discuss everything at every meeting. It's
15 the most wide open meeting--

16 ASSEMBLYMAN DOYLE: I don't address myself to
17 Dover, and I appreciate the way that that municipality
18 is well-run. I'm talking about the overall picture.
19 You said you have served in several other municipalities.

20 MR. HAYSER: I have, including the City of Jersey
21 City. And I would say even there there was quite spirited
22 discussion even on first reading of an ordinance.

23 All municipalities, as a matter of course, have a
24 session of the meeting reserved at the conclusion of the
25 meeting, the public can speak on anything they want to. Then

1 there has to be, as you know, a publication in the
2 newspapers, and then there is a second meeting and then
3 a reading, which is preceded by a public hearing.

4 ASSEMBLYMAN DOYLE: Now that the public hearing
5 is at the second meeting, but before that the public
6 never had an opportunity to see it but for the first
7 reading and then they don't have the opportunity to discuss
8 it, an opinion, the ordinance, the first reading, publication
9 in the paper, all of which is the commission, certain
10 public funds. But the public never participated before
11 those decisions were made.

2 MR. HAYSER: You wouldn't suggest that we not
3 publish it and go to the expense?

4 ASSEMBLYMAN DOYLE: No. I'm suggesting that they
5 did not get to participate or to see which people thought
6 that such an ordinance perhaps should have been drafted
7 so as to work any will upon them.

8 MR. HAYSER: My experience has been that rarely,
9 unless it's a pro forma ordinance, has an ordinance gone
10 through in the matter of just simply a fiat where there
11 has been no discussion over a period of months by the
12 community, by the officials, both elected and appointed;
13 and secondly, many times it's been my experience that
14 ordinances have been amended after the first reading or
15 at the time of the second reading and adoption; thirdly,

1 I'm sure this committee, as every legislative committee,
2 also gets an opinion of its attorneys, and with so many
3 attorneys on the Judiciary Committee it doesn't need
4 separate counsel as to the validity of a course of action
5 which you have chosen.

6 What I have suggested is that an issue may
7 never get before the public to be aired unless we have
8 some orderly process in which we can bring it up for
9 consideration. I have raised, beyond a legal issue here,
10 certain practical problems which I don't think the
11 committee can ignore, and there are real practical problems
12 in implementing something as this. A serious one I see
13 is among the growing attitude of the very responsible
14 public officials almost an innate feeling that unless they
15 have a legal opinion they're going to subject themselves
16 to indictment, this type of thing, damages. I know it's
17 trite to say, well, philosophically we are inclined to
18 the bill, we believe in its intent. That's not the case
19 here. We strongly urge the adoption of the provisions to
20 safeguard the right of the public, and we also consider
21 emergency meetings many times. So we are not opposed to
22 the public's right to know, but we are concerned with
23 is that the aspects of this bill will be so interpreted
24 that it will have a detrimental effect on the particular
25 official who will be afraid to act or that it will open a

1 caucus session in the type of disorganization that we can
2 never properly get the public business before the public
3 for their consideration.

4 ASSEMBLYMAN DOYLE: You mention that in Dover
5 they have very spirited discussions. You don't feel that
6 at the public meeting the five township committee persons
7 are inhibited by the presence of the public, do you?

8 MR. HAYSER: At the public meetings, no, not at
9 all.

10 ASSEMBLYMAN DOYLE: You think they would be
11 inhibited? I don't mean just those five.

12 MR. HAYSER: Yes. In my general experience I
13 have served in the City of Jersey City, East Orange, City
14 of Bayonne before coming to Dover Township. As I said,
15 there are only so many meetings you can schedule. If you
16 have an agenda meeting there are going to be ten different
17 things to come in, ten different areas. It might be a
18 disciplinary matter, for example. Others will be public.
19 Unless you're going to have rotating doors moving the people
20 in and out, they are going to be--you're going to rotate
21 rooms and go from one room to another, there is going to be
22 a certain inhibition to the free discussion.

23 The other danger is that you may have a particular
24 official who might wish to grandstand, but who you can get
25 in a room and point out to him what are the detriments if he

1 continues the course of action that he is suggesting. But
2 if you have him before his constituents and before
3 cameras and he is standing on the chair yelling and
4 screaming, you don't accomplish anything for the use of
5 the municipality.

6 ASSEMBLYMAN KARCHER: With all deference to
7 the prior witnesses, you're the first who has appeared who
8 is an attorney-at-law, and I want to get into a subject
9 away perhaps from the practicality which you're talking
10 about, which I agree with. I think it's a matter which
11 as Assemblyman Codey was touching upon before with regard
12 to the conflict between the right of privacy and the right
13 to know. Maybe going at the right of privacy just a step
14 further, and I would like your professional opinion as
15 a counselor, do you have any troubles with this particular
16 proposed legislation with regard to the First Amendment?
17 Does it actually violate the freedom of association that's
18 guaranteed to us by making it a crime to associate or
19 make it a disorderly persons offense to associate with another
20 gentleman who happens to be a councilman? Does it prohibit
21 unconstitutionally your freedom of speech, your freedom of
22 press, the right to express something or to hand a document
23 to another member of the council?

24 MR. HAYSER: I will say this, whether it does or
25 doesn't in reality is immaterial. It produces that fear in

1 a chilling effect. The Dombrowski Rule, as we know it,
2 if it produces that effect--

3 ASSEMBLYMAN KARCHER: You think this would?

4 MR. HAYSER: Gentlemen, this bill already has
5 in certain municipalities produced a chilling effect. You
6 must realize that municipal government is not the playground
7 of lawyers, necessarily. We are talking about laymen,
8 responsible laymen from a variety of vocations who are not
9 familiar with the intricacies of law, and I can say to
0 them all I want, I don't see any circumstances that I can
1 imagine that you're going to be subject to the penal
2 provision. But I can't say to them that they are not
3 absolutely, and that's what they want to know.

4 ASSEMBLYMAN SPIZZIRI: Mr. Hayser, do you feel
5 at the present time under the present body of law there is
6 sufficient protection to the public interest in guarding
7 against a vote taken in camera by a public body?

8 MR. HAYSER: I feel there is, except for the
9 areas that I have outlined about perhaps in review of the
0 guidelines on emergency meetings and the requirements of
1 form of public notice that has to be given. I think there
2 is sufficient protection. I think the question becomes at
3 what cost that protection exists. Many times it's not
4 so much that the protection doesn't exist, but that a
5 particular citizen and citizens in general are not willing

1 to avail themselves to the protection that exists.

2 ASSEMBLYMAN SPIZZIRI: Do you feel that, in line
3 with Assemblyman Doyle's questioning, perhaps the
4 statute on the introduction and passage of ordinance
5 should be provided at which a public vote would be taken
6 so as to give the governing body the opportunity to digest
7 the public comments and to perhaps amend the ordinance
8 for a third reading, realizing, of course, that this would
9 slow down the legislative process of a governing body?

10 MR. HAYSER: I want to say that personally I
11 have no objection with the theme of what you have said.

12 Let me give you a practical problem. We have
13 a ridiculous, I think, statute on the books under the
14 Local Lands and Buildings Law, which says that if we are
15 going to sell our land or lease it we do it by resolution,
16 but if we are going to purchase it we do it by ordinance.

17 ASSEMBLYMAN HAWKINS: Is that a statute, sir?

18 MR. HAYSER: That appears in the Local Lands and
19 Buildings Law, R.S. 40:A-12.1, et seq.

20 ASSEMBLYMAN HAWKINS: If you have any suggestion
21 for amendment of statutes, feel free to tell us.

22 MR. HAYSER: At anytime a township wishes to
23 purchase land it must be published, which is not a
24 legislative ordinance. It's not going to appear in any
25 code books, a second meeting, and now if you propose to me

1 a third meeting on something like that, then where do we
2 go? Real estate transactions. We have to move them
3 very fast.

4 I am not implying there isn't a public right to
5 know. But we have to review what we require by ordinance
6 and what we require by resolution.

7 ASSEMBLYMAN SPIZZIRI: There is a third area
8 which I'd like to question you on, which nobody else has
9 touched upon.

0 I have received two letters, one from the Village
1 of Ridgewood, and one from the Village of Ridgewood attorney
2 In one of the letters it refers to an effect that this
3 bill might have on the advisory board's commission and
4 committees. Let me read you that point and ask you for
5 your comment.

6 "Some very valuable work is rendered to municipal
7 government by unselfish, unpaid persons, who are willing
8 to devote time, talents, and energy to governmental
9 service. If they are unable to consider ideas and proposals
0 with those whom they must deal in an uninhibited atmosphere,
1 they are unlikely to continue service."

2 Would you care to comment on that?

3 MR. HAYSER: I think that is a very true remark.

4 I have already had some readings and indications from
5 government officials I have spoken to in my area whose

1 positions as governing officials is not full-time, who
2 receive minimal compensation, but who put in perhaps
3 maximum time, more so than the compensation they receive,
4 that it reaches a point, perhaps, is it worth it. I am
5 not saying about the public right to know is it worth
6 it, I'm saying.

7 Someone made the point, one of the assemblyman
8 earlier, do you want to have caucuses so that you can
9 avoid potshots. With all due deference to the Senate and
10 Assembly of the State of New Jersey, the average citizen
11 has complaints, he sooner goes to his councilman rather
12 than to his senator or assemblyman. The average citizen
13 does not know who his senator or assemblyman is.

14 The fact that they are being immunized is an
15 absurdity, because they get on the phone at 2:30 in the
16 morning and their wife and kids are yelling, they're
17 going to get it.

18 ASSEMBLYMAN SPIZZIRI: I think we have all
19 experienced that.

20 ASSEMBLYMAN HAWKINS: Mr. Hayser, I want to thank
21 you very much. We have benefitted much by your visit.

22 MR. HAYSER: I appreciate the opportunity to
23 be heard this morning.

24 (A short recess was taken.)

25 ASSEMBLYMAN HAWKINS: We are going to resume the

1 hearing now. Prior to the break we were going to hear
2 from Mr. Lewis Ripps, Legislative Affairs Chairman of the
3 New Jersey Common Cause.

4 MR. LEWIS S. RIPPS: Thank you very much, Mr.
5 Hawkins.

6 I have distributed copies of a statement. I
7 don't know whether Mr. Hawkins has them.

8 Gentlemen, my name is Lewis Ripps. I reside
9 in Bayonne, New Jersey.

10 I am appearing here today as Legislative
11 Affairs Chairman of New Jersey Common Cause and represent
12 more than 13,500 New Jersey members of Common Cause.

13 Although Common Cause has been in the forefront
14 of government reform throughout the United States and
15 has established as one of its goals the enactment of open
16 public meetings legislation in the various states and in
17 the federal government, we are very pleased to note that
18 the legislation we are discussing here today originated
19 with Assemblyman Baer on his own initiative, rather than
20 as a result of the lobbying effort of Common Cause.

21 New Jersey Common Cause would like to compliment
22 the drafters and sponsors of Assembly Bill No. A-1030.
23 We enthusiastically support the bill's statement of purpose.

24 We believe it is essential to the maintenance
25 of a democratic society that public business be performed in

1 an open and public manner and that the citizens of our
2 society should have an opportunity to be aware of all
3 the considerations that led to the decisions made by
4 public officials. New Jersey Common Cause will support
5 adoption of A-1030 but would like to suggest that some of
6 the following comments be incorporated in an amendment
7 form of this bill:

8 1. We would assume that the "public body"
9 defined in this Act includes all those bodies that are
10 required by state statute to perform a governmental
11 function at a public meeting. By that I mean, for example,
12 on an ordinance or resolution, the granting of a variance,
13 the granting of subdivisions, whatever actions must be
14 affected at a public meeting. Common Cause would define
15 the public body as being exclusive to those particular
16 areas. We would not expect, of course, that the chance
17 meeting of the mayor coming out of a telephone booth with
18 a member of the Sanitation Department is a meeting of a
19 public body, nor would their discussions in a mayor's office
20 or in the office of any member of any level of government
21 be considered a meeting of the public body as far as
22 Common Cause is concerned.

23 Common Cause suggests that the definition of
24 "meeting" mean the convening of a quorum of the
25 constituent membership of a public body, whether corporal

1 or by means of electronic equipment, to discuss or act
2 upon a matter over which that public body has jurisdiction,
3 and, of course, must act eventually at some public meeting.

4 A "quorum" would be defined as that number of
5 members of a public body that are necessary to give that
6 body's actions the force or effect of law. For example,
7 if four members constitute a quorum of a city council
8 those matters which must ultimately be acted upon by the
9 council at a public meeting cannot be considered, discussed,
10 deliberated, or acted upon at any private meeting of any
11 four members of the city council. Of course, we wouldn't
12 like to permit in this particular instance any two or
13 three member meetings to be held simply to subvert the
14 intent of this Act and give the councilmen an opportunity
15 to discuss and agree upon things privately. Other examples
16 would be such meetings as planning boards, boards of
17 adjustment, the PUC, for example, which sets rates which
18 must be set at public meetings. I think the public has
19 the right to hear the deliberations of all of these bodies
20 of government to determine why the particular agencies of
21 government reached a decision that it did come to.

22 2. This Act should also provide that the public
23 meetings referred to herein shall be held in such place or
24 places that are accessible to the public. There is no
25 provision in the Act for making these public meetings

1 accessible. When sites are selected for such public
2 meetings, the public body shall have in mind the
3 convenience of the public in gaining access to the public
4 meeting and the provision of adequate room for the public
5 to congregate.

6 Quite often I have been in attendance at public
7 meetings where there wasn't sufficient room for the public
8 to congregate. I think those provisions ought to be
9 incorporated in the Act. I think the meetings should
10 be conducted at places that are accessible by public
11 transportation facilities and that the public should have
12 an opportunity to gain access at its convenience to the
13 public meetings.

14 3. Common Cause would also include in the
15 definition of "public business" all matters leading up
16 to final action taken by a public body at a public meeting
17 including even the placing on the agenda of matters
18 to be considered by the public body.

19 Sometimes you find out a lot in the minds of the
20 people, members of the public body, as to their thoughts
21 on a particular issue at an agenda session. We would also
22 like to know how it gets placed on the agenda, and we would
23 also like to find out why certain matters do not come to the
24 public attention.

25 4. With respect to A-1030's exceptions to the

1 requirement of providing "adequate notice," Common Cause
2 suggests that subparagraph (4)a and (4)b of paragraph 4b
3 be deleted in its entirety. Section (4)a would allow
4 the public body to conduct a meeting even though it could
5 not have reasonably foreseen the need for such meeting
6 at a time when adequate notice could have been provided.

7 Public bodies are already permitted in this
8 Act to deal with matters of urgency and importance without
9 notice if such delay for the purpose of providing adequate
10 notice would result in substantial harm to the public
11 interest. If the matter is not of such urgency and
12 importance, there is no reason to tolerate conduct of
13 meetings of public bodies without adequate notice when
14 such adequate notice can really be provided if the meeting
15 were just held at a somewhat later date.

16 Section (4)b would permit a public body to
17 conduct a meeting although it could have foreseen the
18 need for such meeting at a time when adequate notice could
19 have been provided, but nevertheless failed to do so.
20 Such an exception is contrary to the basic concept of
21 requiring public notice. For this reason, Section (4)(a)
22 and (4)(b) of paragraph 5b should also be exercised
23 from the bill.

24 5. A-1030 characterizes the conduct of any
25 person who knowingly participates in a meeting of a public

1 body of which he is a member and not held in accordance
2 with the provisions in this Act as a disorderly person.
3 Common Cause questions whether or not this bill ought
4 to set forth penalties or fines for such a disorderly act.
5 Common Cause wonders where the enforcement procedure is
6 in this Act, who will enforce the provisions of this Act.
7 We believe, of course, that in matters dealing with
8 state agencies, the attorney general ought to enforce
9 provisions of the Act. Matters dealing on the county
10 level, maybe the county prosecutor's office ought to have
11 the opportunity of enforcing provisions of this Act.

12 6. Common Cause would also like to suggest that
13 the Assembly incorporate into this bill a requirement that
14 public bodies covered by this Act shall keep written
15 minutes of all of their meetings. Such minutes should
16 include, but need not be limited to, the following:

- 17 A. The date, time, and place of the meeting;
- 18 B. The members of the public body recorded as either
19 present or absent;
- 20 C. The substance of all matters proposed, discussed,
21 or decided, and a record by individual member, of
22 any votes taken; and
- 23 D. Any other information that any members of the
24 public body requests be included or reflected in
25 the minutes, including a record, by individual

1 member, of any vote.

2 The minutes shall be public record and shall be
3 available within a reasonable time after the meeting.

4 All or any part of a meeting of a public body
5 may be recorded by any person in attendance by means of
6 a tape recorder or any other means of sonic reproduction
7 provided that in so recording there is no active interference
8 with the conduct of the meeting.

9 7. Common Cause would define "adequate notice"
0 in the following manner:

- 1 A. All public bodies shall give written public notice
2 of their regular meetings at the beginning of
3 each calendar year. The notice shall include the
4 dates, times, and places of such meetings.
- 5 B. All public bodies shall give supplemental written
6 public notice of any regular, special, or re-
7 scheduled meeting, no later than 72 hours before
8 the meeting. The notice shall include the
9 agenda, date, time, and place of the meeting.
- 0 C. Written public notice shall include, but need
1 not be limited to:
- 2 (1) Posting a copy of the notice at the
3 principal office of the public body
4 holding the meeting, or if no such
5 office exists, at the building in which

1 the meeting is to be held, and in at
2 least three other prominent places
3 within the governmental unit; and

4 (2) Mailing a copy of the notice to any
5 person who or newspaper which requests
6 notice of such meetings; any such
7 person or newspaper shall be given
8 notice of all special or rescheduled
9 meetings in the same manner as is
10 given to members of the public body.

11 8. Section 7a and 7b and Section 8 provide an
12 opportunity for members of the public to seek relief
13 for failure of public bodies to act in accordance with
14 provisions of this Act. Common Cause believes that the
15 Act ought to provide that successful private litigants
16 acting under the appropriate sections of this Act shall
17 have their legal fees fully paid by the public body whose
18 decisions or actions they have successfully challenged.

19 I would like to add a couple of additional
20 comments. I have been listening to some of the testimony
21 introduced today by public officials, and I have always
22 had the feeling, and I still have the feeling after
23 listening to some of these public officials speak today,
24 that elected officials regard public office as their
25 private domain. I think they're wrong. The office is

1 always in the domain of the public. The only way to keep
2 it that way is to give the public the accessibility
3 to the decision-making process of public bodies.

4 Somebody suggested that, gee whiz, nobody is
5 complaining about what we are doing because very few people
6 come to public meetings. I think one of the reasons why
7 few people come to public meetings is because they are not
8 aware of the deliberations and they think that the conduct
9 of public meetings is a closed kind of corporation, that
0 the decisions have been made in some private caucus or
1 some private conference meeting. But I don't think that
2 the Gallup Poll shares the same confidence in government
3 that seems to be displayed by the Mayor of Chatham Borough,
4 because the Gallup Poll shows that the lack of confidence
5 in government is prevalent among the people of the
6 United States. I think it clearly contradicts the Mayor
7 of Chatham's point of view.

8 The Mayor of Chatham pointed out that he doesn't
9 feel personally that this committee needs this bill, and
0 he doesn't feel that he needs the bill. He is, I guess,
1 speaking as an elected public official. I am inclined to
2 agree with him that elected officials don't need this bill.
3 However, the bill is not to serve the pleasure of the
4 elected officials. The public needs this bill. We think
5 you ought to have that in mind when you consider it and

1 make recommendations to the full assembly for final
2 consideration and adoption.

3 Common Cause would like to thank you for this
4 opportunity to present its point of view to you today.

5 ASSEMBLYMAN HAWKINS: I have a statement to make.
6 We are going to break promptly at one o'clock, if not
7 before, for lunch and return promptly at two. Prior to
8 breaking for lunch, there are several people that have
9 expressed interest in giving testimony. We are going to
10 do our best.

11 The next person to give testimony will be the
12 sponser of the bill, Assemblyman Baer. So I would ask
13 those who are speaking, and the members of this committee,
14 to keep their questions and comments concise, brief, and
15 to the point so that we can get as much done as possible
16 prior to the lunch hour.

17 Are there any questions of Mr. Ripps?

18 Mr. Codey.

19 ASSEMBLYMAN CODEY: Mr. Ripps, with regard to
20 your testimony that was given before, do you feel now
21 that local government meeting in caucus is doing things
22 that are detrimental to the public interest in that
23 caucus?

24 MR. RIPPS: No. I can't say that they are doing
25 things that are necessarily detrimental to the public's

1 interest, nor can I say that they are serving the public's
2 interest by continuing to meet and deliberate in private
3 caucus.

4 I have had the opportunity to meet in caucus
5 with both the City Council of the City of Bayonne and the
6 Board of Education of the City of Bayonne. I think some
7 of the reasons why they reach a particular point of view
8 in regard to specific legislation or specific items on
9 their agenda really has nothing to do with the item that
0 they are considering. It may be a question of personality
1 or some other personal consideration, and I think to that
2 extent the interest of the public is certainly disserved
3 by the private meetings.

4 ASSEMBLYMAN CODEY: I serve as a member of the
5 Board of Adjustment in the City of Orange. We hear a case.
6 We go into caucus and discuss that case, and at that
7 caucus each member basically gives what their feelings
8 are concerning the case. I certainly want the feelings
9 of my fellow members of that board as to what they feel
0 about the case we have just heard.

1 I definitely feel that if we were sitting
2 publicly on this matter, deliberating it, that those men
3 would not come to me with their true feelings, for a lot
4 of reasons. Some may feel when they give me an opinion
5 against it as to why they might feel harassed by a certain

1 member of the public who has spoken against it and the
2 public might say, Well, you tried to influence Mr. Codey
3 or somebody else in voting against it along with you, and
4 that comes to my mind. I'd like to know your opinion
5 about that.

6 MR. RIPPS: I feel this way about it. If any
7 member of the Board of Adjustment who has the courage of
8 conviction with respect to a particular matter that's
9 before the Board of Adjustment, he certainly ought to
10 have that same courage before the public as he has in
11 private.

12 The thing I am concerned about is that too often
13 in boards of adjustment caucuses perhaps you get the
14 attitude again of personality, whether or not there are
15 certain political pressures that are brought to bear that
16 are discussed in caucus but are never discussed before the
17 public, and I think all of these kinds of things, all the
18 personalities should be left out of it. But all the
19 legitimate reasons for deciding a case that's heard by the
20 Board of Adjustment, or a planning board on a subdivision,
21 all the legitimate reasons can certainly be discussed
22 before the public. It's the illegitimate, not the legitimate,
23 reasons that have no basis in fact or law that are discussed
24 in private caucus that more often than not affect the
25 decision-making process that would be eliminated if that

1 matter were discussed before the public, and that's what
2 we ought to do.

3 ASSEMBLYMAN CODEY: If someone wanted to exert
4 pressure on me, a fellow board member, to vote a certain
5 way on that matter, if he can't do it at a caucus he will
6 do it some other time.

7 MR. RIPPS: There is no way of stopping that.
8 When you meet in caucus saying these people want it done
9 this way, all right, or the mayor is opposed to this,
10 or in my particular community there is a large refinery,
11 Exxon Corporation, they don't want this or they do want
12 this, you have to go along with them. After all, they
13 have a lot of clout, et cetera. Those are not legitimate
14 reasons for passing or granting a variance or granting
15 a subdivision, or what have you. I think that kind of
16 deliberation will be kept out of the public meetings.

17 ASSEMBLYMAN HAWKINS: Any other questions?

18 Mr. Spizziri.

19 ASSEMBLYMAN SPIZZIRI: Mr. Ripps, I'm not aware
20 of your background, but could you tell me have you ever
21 served on a public body?

22 MR. RIPPS: No, sir.

23 ASSEMBLYMAN SPIZZIR: In your remarks a thought
24 came to me. Would your remarks then include in common
25 practice now of the Senate and the General Assembly of holding

1 conference meetings among their members?

2 MR. RIPPS: Well, I personally view the
3 conduct of the Assembly and the Senate as a different
4 matter. I think this ought to be established by permanent
5 rules that are established by both houses. And, of course,
6 as Mr. Doyle well knows, because it was testified before
7 his committee, Common Cause is in favor of open meetings
8 of committees of the Assembly and certainly of the Senate.

9 ASSEMBLY SPIZZIRI: I'm not talking about
10 committee meetings. I'm talking about conference meetings.

11 MR. RIPPS: What do you mean by a conference
12 meeting?

13 ASSEMBLYMAN SPIZZIRI: Where the Democratic
14 majority or the Republican minority would hold a conference
15 meeting which would discuss--

16 MR. RIPPS: We are opposed to holding party
17 caucuses.

18 ASSEMBLYMAN SPIZZIRI: You are?

19 MR. RIPPS: Yes, sir, party caucuses.

20 ASSEMBLYMAN SPIZZIRI: You referred to decision-
21 making process, and we are talking about the Board of
22 Adjustment, personalities that may enter into it, in making
23 that decision. Wouldn't that same problem remain in the
24 public portion of the meeting, although perhaps it might
25 not be discussed, but that I may want to vote against a

1 particular application, for example, because I don't like
2 the way the man parts his hair or the applicant parts
3 his hair. So I am prejudiced in that respect against him,
4 but I am not going to say it in public. So I'm going to say--

5 MR. RIPPS: Right now when they discuss it in
6 private and a member of the Board of Adjustment or any
7 public body is challenged, How did you come to reach this
8 decision? And their response is, Listen, we discussed
9 that fully in caucus.

0 ASSEMBLYMAN SPIZZIRI: That's not exactly true,
1 because with the Board of Adjustment, any finding by the
2 Board of Adjustment must, by law, be documented in fact,
3 whether it's a favorable or unfavorable decision.

4 MR. RIPPS: But they don't tell you how they
5 reach the decision.

6 ASSEMBLYMAN SPIZZIRI: They find it on the basis
7 of facts, that's how they reach their decision.

8 MR. RIPPS: I wish I could agree with you. As
9 someone who has attended 50 Board of Adjustment meetings
0 in the last ten years, I can't agree with you.

1 ASSEMBLYMAN SPIZZIRI: That happens to be a law,
2 and that's a fact.

3 ASSEMBLYMAN HAWKINS: May I ask that we not have
4 colloquy between two individuals, and let's just get
5 information at this time. We are pressed for time.

1 ASSEMBLYMAN SPIZZIRI: My final question has to
2 do with the awareness of the public.

3 Isn't there an obligation on the part of the
4 public to seek out the information and make themselves
5 aware of what is going on? Isn't it a two way street?

6 MR. RIPPS: It's definitely a two way street.
7 One of the responsibilities of the public is to participate
8 in the process of government, and our argument has always
9 been, and my argument personally has been, that the public
10 steps out of the voting booth and thinks that they have
11 done their part in the democratic process and they have
12 exercised all the privileges afforded to them. But the
13 public too often forgets their responsibilities, and the
14 day after the vote is taken the general public goes home
15 and forgets about it. But the people elected to office,
16 lobby groups, common cause, for example, don't forget about
17 it.

18 ASSEMBLYMAN SPIZZIRI: How would A-1030 obviate
19 that?

20 MR. RIPPS: I think A-1030 would attract the
21 public to the meetings. The public would become more aware
22 of what is going on, more aware of deliberations. The
23 public would see more information printed in the media
24 as to the deliberations of government and the processes
25 of government, and I think they will become more interested

1 in it.

2 ASSEMBLYMAN HAWKINS: Assemblyman Karcher.

3 ASSEMBLYMAN KARCHER: To go back for a second
4 to the example given by Mr. Codey. When he does go with
5 his fellow members into deliberations, goes into the
6 decision-making process, that is a quasi-judicial function.
7 If that is open, what is to say that the courts should not
8 be open, the appellate division, the supreme court should
9 not be open? Or would Common Cause support requiring the
0 supreme court to open their deliberations to the public?

1 MR. RIPPS: Well, I think you have answered it
2 there. It's not a purely judicial function.

3 ASSEMBLYMAN KARCHER: The only reason it's
4 quasi-judicial. That doesn't answer it at all, because
5 the only reason it's quasi-judicial is because it's taking
6 place by administrative agencies. But the function they
7 are performing at that moment in the decision-making
8 process is 100 per cent judicial in nature. It's because
9 it's being done by an administrative agency that has other
0 functions that it's a quasi-judicial board. But when they
1 hear testimony, deliberate and make a decision--by the
2 way, the law of this state does say that every decision,
3 whether made by municipality, planning board, board of
4 adjustment, must be buttressed by the findings of facts,
5 and if those findings of facts do not appear, the reviewing

1 court does one of two things: either grants what is being
2 asked for or refers it back for further findings of fact.
3 They won't consider it without a record.

4 All I'm asking is in that function is it
5 precisely and exactly the same thing that the appellate
6 division does? Is it the decision-making process of those
7 gentlemen that can be affected? The Chief Justice might
8 not like people with long hair or mustaches, you don't
9 know.

10 MR. RIPPS: Well, there is a difference, because
11 an affirmative decision made by a Board of Adjustment has
12 to be affirmed, which is a legislative body and not--

13 ASSEMBLYMAN KARCHER: That's not true.

14 MR. RIPPS: But in certain instances it does
15 have to be affirmed.

16 ASSEMBLYMAN KARCHER: One out of four.

17 MR. RIPPS: You're talking about special
18 exceptions.

19 ASSEMBLYMAN KARCHER: Special use exceptions.

20 MR. RIPPS: I don't view it as a judicial
21 function, and we would not suggest it.

22 ASSEMBLYMAN KARCHER: What you view and what the
23 court views are two different matters.

24 What is your feeling about the First Amendment?
25 Do you have any trouble with the First Amendment with

1 regard to this bill?

2 MR. RIPPS: No, not with regard to the bill,
3 not with the corrections we have suggested.

4 ASSEMBLYMAN HAWKINS: Mr. Gregorio.

5 ASSEMBLYMAN GREGORIO: On page 5, sir, "Successful
6 private litigants acting under the appropriate sections
7 of this Act shall have their legal fees fully paid by the
8 public body whose decisions or actions they have
9 successfully challenged.

10 My question is an unsuccessful litigation.
11 Would these private litigants pay the legal fees if they
12 are unsuccessful?

13 MR. RIPPS: I think they should be required to.

14 ASSEMBLYMAN DOYLE: You mentioned the Gallup Poll.
15 That was not what New Jerseyans think of local New Jersey
16 officials, was it?

17 MR. RIPPS: No. It was throughout the United
18 States.

19 ASSEMBLYMAN DOYLE: Do you think there is a
20 wide unhappiness amongst the people of this state with the
21 quality of their local government?

22 MR. RIPPS: I don't say there is. I say there is
23 a lack of confidence in government on a national level.
24 After all, I think the Governor ran on a platform which
25 suggested the same sort of thing. He said that people lacked

1 confidence in government. Everybody that runs for office
2 as a challenger always says that the people who are in
3 government don't have the confidence of the public, that's
4 why they're running in opposition to them. Maybe the
5 Governor was right.

6 ASSEMBLYMAN DOYLE: We are not here to reelect
7 the Governor. We are here talking about this bill.

8 In 70 to 80 municipalities of this state there
9 is the Faulkner Act, which allows for recall provisions.
10 It's my understanding that notwithstanding the number of
11 municipalities that have it, only maybe a dozen do not,
12 wouldn't that suggest to you that there is a wider
13 confidence in local governing body members than your
14 statement might suggest?

15 MR. RIPPS: No, it certainly doesn't.

16 ASSEMBLYMAN DOYLE: Why not?

17 MR. RIPPS: Because Common Cause has always said
18 that everybody is organized but the people, and I think
19 that's the particular case here. I think most of these
20 things are done, in a matter of recent months, anyway,
21 recent years. I have seen recalls in Hudson County seeking
22 the recall of somebody else, one political party wishing to
23 displace another political party. I don't think the public
24 is organized well enough to bring about effective recalls
25 of government officials. The public is disorganized.

1 ASSEMBLYMAN DOYLE: This proposal encompasses
2 exceptions. Do you think those exceptions should be in
3 there?

4 MR. RIPPS: All of the exceptions, except the
5 ones we have noted, yes, should be in there.

6 ASSEMBLYMAN DOYLE: Do you think all employment
7 matters, hiring, firing, administrative matters should be
8 nonpublic?

9 MR. RIPPS: I think they should, yes.

10 ASSEMBLYMAN DOYLE: In a number of governing
11 bodies the awards of certain licenses, particularly
12 liquor licenses, do you think they should be continued
13 to be private or should they be made public, too?

14 MR. RIPPS: I see no reason why they shouldn't
15 be made public.

16 ASSEMBLYMAN DOYLE: You mentioned emergency
17 meetings. Don't you think there should be some provision
18 without notice?

19 MR. RIPPS: I didn't say they shouldn't. I said
20 the Act provides in other areas and sets guidelines for
21 the conducting of emergency meetings. The only thing
22 I'm saying is that subparagraph 4a and subparagraph 4b
23 seems to controvert everything else. It seems to provide
24 an out which has already been provided in other sections
25 of the Act.

1 ASSEMBLYMAN DOYLE: Do you think if this Act
2 were enacted people would come to workshop meetings anymore
3 than they do now to the public body meetings, which is
4 rather limited? If you get one per cent, I find, of
5 a municipality it's a heck of a lot.

6 MR. RIPPS: I can't say that more people are
7 going to come, but I can say I think it's going to restore
8 some confidence in government. Gee whiz, if these people
9 are willing to do those things in public, what they're doing
10 has certainly got to be above board. Not only will it
11 restore confidence on the part of the public, but I think
12 that the elected officials or the people who hold these
13 positions will have some confidence in the public. I get
14 the feeling that the elected official and the appointed
15 officials, the people involved in government, distrust the
16 public. They don't think the public has got the ability
17 to sit in at some of these meetings or take an interest
18 in what their government is doing, and I think they're
19 wrong. I think the public does want to participate,
20 to hear what is going on.

21 I wish I had as much confidence that the public
22 officials want to trust the public as much as the public
23 wants to trust its public officials.

24 ASSEMBLYMAN DOYLE: If this bill were put through,
25 do you think even a small fraction of the 567 municipalities

1 that this state has would be any different?

2 MR. RIPPS: Yes, I think a small fraction might
3 have been different, yes.

4 ASSEMBLYMAN HAWKINS: Any other questions?

5 ASSEMBLYMAN SPIZZIRI: Mr. Ripps, the bills gives
6 an exception to the Governor's office. Do you feel that
7 the Governor and the cabinet should be excluded from
8 public scrutiny? And if so, why?

9 MR. RIPPS: No, I don't feel they should be
10 excluded from public scrutiny. But if you note the
11 definition we give, it by and large excludes it from
12 scrutiny under the terms of this Act because we are
13 talking about actions taken by public bodies which must
14 be taken at some public meeting in order to have the
15 force and effect of law. We're not talking about
16 administrative details, about the head of the Sanitation
17 Department meeting with the sanitation employees and
18 setting the schedule of hours and telling them how they
19 are to work.

20 ASSEMBLYMAN SPIZZIRI: Doesn't the confidence
21 that this bill seeks to restore in public officials, in
22 public bodies, also go to the Governor's office and the
23 cabinet?

24 MR. RIPPS: It certainly does.

25 ASSEMBLYMAN SPIZZIRI: Why should they be

1 excluded, then?

2 MR. RIPPS: I think we are talking again about
3 two different things. I don't want to repeat myself.
4 Maybe if the Governor is taking certain actions, I would
5 say actions would have the same force and effect. The
6 public should be aware of those particular actions. But
7 I think right now the legislature is equipped to scrutinize
8 the actions of the administrative offices of the
9 government.

10 ASSEMBLYMAN SPIZZIRI: How about policy-making
11 decisions which affect the public interest of all the
12 residents of this state by the cabinet and the Governor?

13 MR. RIPPS: Then we are not only talking about--
14 we are talking about policy-making decisions at every
15 executive level of government. We shouldn't limit our-
16 selves to the Governor and the cabinet. We might go right
17 down to the superintendent of schools, and I don't think
18 that's a workable kind of thing. I don't think we can
19 do anything, really, that is going to severely or adversely
20 affect the interest of the public without coming before
21 some public body for a public decision-making process.
22 They can't make law.

23 ASSEMBLYMAN HAWKINS: Assemblyman Codey has one
24 last question, and then we're going to have to terminate
25 you.

1 ASSEMBLYMAN CODEY: Along the lines just mentioned
2 by Assemblyman Spizziri, don't you feel that the Governor
3 when he has my bill on his desk, when he speaks with his
4 legal counsel and they debate whether to sign my bill or
5 to veto it, that that should be a matter of public record
6 what they have said, how they have reached the decision,
7 rather than--

8 MR. RIPPS: Mr. Codey, I can't give you an
9 honest answer to that question. I'd really have to consider
10 it.

11 ASSEMBLYMAN HAWKINS: Mr. Ripps, thank you ever
12 so much for your presentation.

13 MR. RIPPS: Thank you.

14 ASSEMBLYMAN HAWKINS: The sponser of the bill,
15 Byron Baer. We will hear the statement of the sponser
16 of the bill presently. He will return in the afternoon
17 session, at which time he will give further comments
18 and answer questions from the committee, so that we can
19 get in as much as possible by one o'clock.

20 Assemblyman Baer.

21 ASSEMBLYMAN BYRON M. BAER: Good morning, ladies
22 and gentlemen. My name is Byron M. Baer, Assemblyman from
23 District 37 in Eastern Bergen County. I am the author
24 and sponser of A-1030, the Open Public Meetings Act.

25 I wish to compliment the Judiciary Committee on

1 its promptness in arranging for hearings on this bill.
2 This piece of legislation was originally introduced on
3 February 22, 1973 during the previous administration,
4 and the prior chairman of the State Government Committee
5 refused to hold hearings on it or even to put it on the
6 committee's agenda for discussion for the larger part of
7 a year. It had co-sponsors from both parties then and
8 now, and I appreciate that this has been scheduled for
9 hearing in approximately a month from the time of
10 introduction.

11 This bill will have a favorable impact on
12 New Jersey government for generations to come. It is in
13 harmony with the Byrne Administration's commitment to
14 "government under glass." Because of scandals at various
15 levels of government, deception by those who govern has
16 become a grave concern. It is now clear to many citizens
17 that the withholding of crucial information has been
18 part of a pattern of betrayal of the public interest by
19 some public officials. In other cases, secrecy makes
20 possible hiding official blunders, inefficiency, poor
21 performance, injustice, arbitrariness or double dealing.
22 The reality is that the public performance of some
23 government bodies is pure theater; the decisions that
24 affect all of our lives are commonly being made behind
25 closed doors. This often results in government dictated

1 by special interests, carried out by the few to cater
2 to the privileged.

3 I would like to believe that such improprieties
4 affect only a minority of closed public meetings and public
5 officials. I know that there are many, many dedicated
6 public officials at all levels of government. But
7 sadly, public confidence is at such a low ebb that the closed
8 meetings of many dedicated public officials of the highest
9 integrity cause great distrust among a suspicious and
10 disillusioned public.

11 I might mention in relation to questions that
12 came up just a few minutes ago that low voter turnout
13 on municipal elections recently are evidence of this, and
14 that the failure to use recall procedures may mean
15 nothing more than the confirmation of loss of confidence
16 in the use of the process. It could mean just as much
17 that some people have less hope that the process at
18 present will serve their interest.

19 Many citizens have become alienated from
20 electoral politics and have a feeling of helpless rage
21 because they are convinced that they have little possibility
22 of affecting or knowing the real truth about government
23 actions that vitally affect their lives.

24 By barring the press and public from meetings
25 of governmental boards, commissions, committees, authorities

1 and councils, we deny the average person access to
2 information which would enable him to take action on
3 problems before decisions are made, or in cases where
4 decisions are tentatively made or made soon after. It
5 denies the public access to information as early as
6 possible, so that the public doesn't have the same time
7 to react as they might otherwise have.

8 I can't help but recall the words of Thomas
9 Jefferson, "The basis of our government being the opinion
10 of the people, the very first objective should be to keep
11 that right; and were it left to me to decide whether we
12 should have a government without newspapers, or newspapers
13 without a government, I should not hesitate a moment to
14 prefer the latter."

15 I am not, however, proposing that, Mr. Chairman.
16 The freedom of the press does not simply mean
17 the freedom to print anything without prior restraint.
18 It depends for its very life and breathe on first-hand
19 access to accurate information, which cannot be gained
20 through leaks or sometimes-biassed tips about closed
21 meetings from sources which cannot be checked.

22 I might say to Assemblyman Spizziri, who raised
23 a question earlier, I think it was Assemblyman Spizziri,
24 that one of the problems of information that comes out
25 of closed meetings, even though closed meetings are

1 frequently leaky, they are very frequently inaccurately
 2 leaky; and the press is caught in the position of having
 3 to present to the public often misleading information
 4 at the whim of the person who chooses to make the leak.

5 Our Founding Fathers, in their wisdom, provided
 6 checks and balances which became diluted as the bureaucracy
 7 prevaded every facet of citizens' lives; therefore, it is
 8 essential in order to preserve and keep in practice their
 9 original vision to open up governmental processes to the
 10 people. If the power of governmental bodies goes unchecked,
 11 hasty and unwarranted action will be taken in the hope
 12 that the average citizen will not notice it until he
 13 is presented with a fait accompli. The people have a
 14 constitutional right to petition their government for
 15 redress of grievances, but if they don't have the necessary
 16 information beforehand, very often they become aware
 17 of the situation contrary to the public good where it is
 18 too late for effective action on the part of citizens.

19 Even if we fail to open up the system, it will
 20 inevitably lead to impairment of the electoral process.
 21 If people are to vote intelligently they must have access
 22 to as much information as possible about the actions of
 23 their public officials. I hold, with James Madison, that
 24 "a popular government without popular information or the
 25 means of acquiring it, is but a prologue to a farce or a

1 tragedy or perhaps both. Knowledge will forever govern
2 ignorance: And a people who mean to be their own
3 Governors, must arm themselves with the power knowledge
4 gives."

5 Governor Cahill's Attorney-General, Mr. George
6 Kugler, issued a report only last December which came
7 to conclusions essentially similar to those contained
8 in my bill. The Open Public Meetings Act provides that
9 degree of openness without which we cannot hope to restore
10 the public's confidence in our form of government. In
11 providing for increased openness in government, I was
12 careful to safeguard against provisions that would be
13 unfair or impractical. As you will notice, the need to
14 provide for exceptions to blanket openness for emergency
15 situations and protection of civil liberties have been
16 scrupulously taken into account.

17 The Open Public Meetings Act is an idea whose
18 time has come. That does not mean that there will not be
19 opposition from public officials who have become used to
20 the comfort of meeting on public business shielded from
21 public view and accountability. But it may mean that
22 opposition will be in the form of proposed crippling
23 amendments, rather than frontal objections--amendments
24 such as the proposal to bar the public and press from the
25 budget-making process--despite the fact that the power of

1 the press is recognized as one of the most vital powers
2 exercised in the name of the public, or amendments that
3 would allow a meeting for discussion purposes which would
4 return us very much to the present situation.

5 We may hear claims of time wasted in public
6 meetings and alleged "effeciency" in closed meetings.
7 Our Founding Fathers never claimed that democratic means
8 were always faster than undemocratic ones; it was
9 sufficient that they were more just.

10 Ladies and gentlemen of the Judiciary Committee--
11 and I believe the lady member is not present today--I believe
12 you have in your hands today a real opportunity to make
13 our society significantly more democratic and just. How
14 you use that opportunity will long be remembered.

15 ASSEMBLYMAN HAWKINS: Assemblyman Baer, I wish
16 to thank you on behalf of the committee, first of all, for
17 presenting the bill to us, and secondly, for coming this
18 morning to give your dissertation. We will expect to see
19 you this afternoon; is that correct? And if you can see
20 to it that you can present yourself in the vicinity of
21 three o'clock, we hope to get to you somewhere between
22 three and four, if at all possible. Is that all right,
23 sir?

24 ASSEMBLYMAN BAER: I think so. Perhaps I could
25 discuss that with the chairman after we adjourn.

1 ASSEMBLYMAN HAWKINS: Thank you very much.

2 ASSEMBLYMAN CODEY: Is that going to be open?

3 ASSEMBLYMAN BAER: The meeting? Yes, that will
4 be open.

5 ASSEMBLYMAN HAWKINS: A person has requested to
6 be squeezed in before one o'clock, and that is Mary Ellen
7 Irwin, Borough of New Providence, representing the Mayor
8 and council.

9 (MRS.) MARY ELLEN IRWIN: I have a statement from
10 Mayor Bien. He only gave me one copy. I will give it to
11 you gentlemen later and you can reproduce it.

12 Gentlemen of the Committee, I would like to
13 state before I read--

14 ASSEMBLYMAN HAWKINS: Pardon me. If all you're
15 going to do is read it into the record, that can be put
16 into ~~the~~ record at any time.

17 MRS. IRWIN: I think there are a few new points
18 that have not been covered this morning, which I can
19 skip over, if you wish, saying that they have been already
20 stated.

21 ASSEMBLYMAN HAWKINS: All right.

22 MRS. IRWIN: Before reading the Mayor's statement,
23 I would like to make a point that we are one of the few
24 municipalities in the state that has open conference
25 meetings for the past five years. We are one of the ones

1 that have that swinging open door where people do have to
2 go in and out of the room when we discuss personnel and
3 land acquisition and other similar kinds of things that
4 would require the public not be there.

5 I might also state that the only time that anyone
6 comes is during the silly season just prior to an election,
7 and the rest of the year we very rarely have anyone, though
8 we do welcome them and we mention it frequently.

9 "Mr. Chairman, Ladies and Gentlemen:

10 "My name is Edward M. Bien, Mayor of the Borough
11 of New Providence. I regret I cannot personally appear
12 before the Committee to present my views and am offering this
13 statement for the record.

14 "I am unalterably opposed to Assembly Bill 1030.
15 The burden of open meetings should not be placed on
16 municipalities because, in my opinion municipalities, as
17 a whole, do conduct their business in open. The language
18 of the bill is definitely inadequate and its present form
19 can only lead to numerous law suits and delays in the
20 normal operations of municipal business. One can appreciate
21 the intent of the bill but in my opinion the answer does
22 not lie in legislation. The answer lies with the electorate.
23 They can and will make their decision at the polls if their
24 governing bodies are operating in "secret".

25 "In reading the language, the definition of public

1 business certainly leaves something to be desired. If the
2 only criterion is section 13, which states 'This act shall
3 be liberally construed in order to accomplish its purpose
4 and the public policy of this State as set forth in
5 section 2', I shudder to think who will ultimately make a
6 final determination. I also question who determines what is
7 confidential--the citizen, the court?

8 "Section 6 (5) in its entirety is wholly
9 unacceptable and in particular, subsections 5 (a) and (b).
10 The cost of the government is going to increase and the
11 courts will have a backlog of cases causing a breakdown
12 in municipal operations. I may be over reacting but I
13 am sure there will be many test cases.

14 "In section 7 (b), what guarantee does the
15 elected official have that governmental process will not
16 be stymied? Doesn't the citizen have recourse to the courts
17 currently when he feels aggrieved? Will not this bill lead
18 to partisan politics being played in all matters? How can
19 the Legislature tell the Courts that actions taken by
20 a governing body are void based on the language of this bill

21 "Section 9 is an insult to all elected officials
22 and I personally resent the term 'disorderly person' in
23 the language of this bill. In my opinion, this bill appears
24 to have been written by people who have never held elected
25 office and may not fully appreciate the mechanics of

1 of governmental operation.

2 "For the record, it should ne noted the Borough
3 of New Providence does hold open meetings, both public and
4 conference. Admittedly, there are times when 'executive
5 sessions' must be held but I am proud of our record and the
6 many meetings we hold in an attempt to let the people
7 know what is happening.

8 "The thought occurs to me that before the Assembly
9 adopts this bill, they should apply to themselves the
10 language incorporated therein, to see if what is being proposed
11 is workable. I sincerely believe this bill as presently
12 defined leaves much to be desired and should not be
13 enacted.

14 "Edward M. Bien, Mayor
15 "Borough of New Providence."

16 Our entire council discussed the bill at some
17 length. Some of the questions that came up concerning
18 it regarded: Does written notice in newspapers mean
19 advertising? The newspaper is under no mandate to publish,
20 but to advertize every single meeting could be a tremendous
21 burden to the taxpayers. Utilizing a mailing list such as
22 you mentioned at ten cents a letter will also be a financial
23 burden for those of us who come from small municipalities.
24 At present in New Providence we do send the minutes to anybody
25 requesting them.

1 There are no protections for the public
2 officials made up of very well-meaning, hardworking
3 volunteers who approach a thankless job with energy and
4 community spirit. Highly charged rhetoric and political
5 motivations overcoming governmental relations could
6 provide these public spirited citizens with a disorderly
7 conduct rap with the slightest misinterpretation or lack
8 of thoroughness by a clerk or administrator.

9 We feel a number of areas can be clarified,
10 and I will not go through them right now. I think enough
11 people have this morning. But I would like to close with
12 two comments, one in answer to a question which you asked.

13 You asked if the 45 day limit on the statute
14 of limitations will be adequate. I believe I can speak
15 for the Borough saying that it would be entirely unfeasible.
16 Suppose at a meeting, which was later declared null and
17 void, you had awarded the contract, authorized signature,
18 to a contractor on the roads--and I was formerly a public
19 works chairman. That road in New Providence would probably
20 be built by the time the meeting was declared null and void.
21 I believe the 45 days is an unworkable solution.

22 I would like to close with one comment. Two
23 weeks ago the Harbor Commission, in the State of California,
24 in the City of Los Angeles, held a meeting all morning
25 long, which they frequently do, and it got right up to

1 lunchtime. During that meeting at that point the chairman
 2 announced, Since we have run so late and since we know
 3 by our own nature that we will be discussing public
 4 issues, though no votes will be taken, we would like to
 5 invite everyone in the audience--in fact, we must invite
 6 everyone in the audience--to join us for lunch; but, of
 7 course, it's Dutch.

8 ASSEMBLYMAN HAWKINS: Thank you very, very much.
 9 I take it you have to leave at the present time.

10 MRS. IRWIN: If you have questions--

11 ASSEMBLYMAN HAWKINS: The problem is, we don't
 12 have time for questions until two o'clock.

13 MRS. IRWIN: The Mayor, council and attorney
 14 are available at any time for any kind of questions which
 15 the committee may have. The Borough has a population
 16 of approximately 15,000; and with that in mind, we would
 17 be happy to answer any questions any time you want.

18 ASSEMBLYMAN HAWKINS: Thank you very much for
 19 coming.

20 I will now call this meeting adjourned until
 21 two o'clock, and thank everybody for coming. Feel free
 22 to return at two. Promptly it will begin.

23 (A luncheon recess was taken from 1:00 p.m. to
 24 2:00 p.m.)

25 ASSEMBLYMAN HAWKINS: We are now going to open

1 our afternoon session, it being two o'clock, with
2 testimony from the League of Women Voters. But prior
3 to starting the session, again in the prerogative of the
4 chair, I'm going to limit discussion, to limit the
5 questions because of a definite lack of time. We have
6 several people who have requested to speak, and I'm
7 going to make every effort to give everybody an opportunity
8 to speak. So that in order to allow that opportunity,
9 I'm going to limit each speaker to ten minutes and limit
10 the questions of each speaker to five. And if we can
11 do it more quickly than that, all the better. But I want
12 everybody to concentrate on what possibly we have not
13 yet heard. It's not necessary to bring home again and
14 again the same element, one way or the other. We are
15 interested in hearing different points of view, any
16 additional reasons for or against any particular provision
17 of the bill. We take the cogency of the argument into
18 consideration and not necessarily the amount or the numbers
19 for or against.

20 So with that in mind, we will proceed.

21 Who wished to speak first?

22 ASSEMBLYMAN SPIZZIRI: Before you begin with the
23 other witnesses, in the interest of time, I received two
24 letters at my office regarding the public hearing, and I
25 ask that rather than read them into the record that the

1 stenographer be directed to incorporate them in toto
2 into the record.

3 ASSEMBLYMAN HAWKINS: Yes.

4 ASSEMBLYMAN SPIZZIRI: I will give them to the
5 stenographer, and at his leisure he can incorporate them
6 into the record.

7 (The following is a letter from John A. Paulus,
8 Village Manager, to the Honorable John A. Spizziri,
9 Assemblyman, dated March 12, 1974:

10 Dear Assemblyman Spizziri:

11 I understand that Assembly, No. 1030, the
12 Open Public Meetings Act, is currently before the Assembly
13 Judiciary Committee for consideration and that you are a
14 member of that committee. This bill, in my opinion, is the
15 result of overreaction on the part of the State Legislature
16 to a problem. I do not question that some municipalities, to
17 a degree, are conducting business other than at proper
18 public meetings. On the other hand, your proposal will
19 be detrimental to municipal government in the other
20 direction by prohibiting candid consideration of matters
21 by those who must make decisions. Municipal Councilmen, as
22 an example, need opportunities to try out alternate solutions
23 to problems among each other without fear of being improperly
24 criticized for suggesting them. Likewise, Councilmen deserve
25 the opportunity of securing ideas from their staff people

1 without concern that proposals advanced and considered
2 will reach the headline stage.

3 I have great concern that the bill, if enacted,
4 will retard consideration of innovative solutions to problems
5 and reduce professional staff people to mechanics, rather
6 than generators of ideas.

7 Another aspect of this is to encourage people
8 not to serve on advisory boards, commissions, and
9 committees. Some very valuable work is rendered to municipal
10 government by unselfish, unpaid persons, who are willing
11 to devote time, talents, and energy to governmental service.
12 If they are unable to consider ideas and proposals with
13 those whom they must deal in an uninhibited atmosphere,
14 they are unlikely to continue service.

15 If you and the other members of the Judiciary
16 Committee believe that the matter covered by the bill is
17 a problem, I urge that you recommend against the current
18 bill and then work with local government officials through
19 the New Jersey State League of Municipalities in expectation
20 of developing a bill that will serve your purposes and
21 still be beneficial, rather than detrimental, to local
22 government.

23 Your consideration of these ideas will be
24 sincerely appreciated.

25 Yours very truly, John A. Paulus, Village Manager

1 (The following is a letter from Charles C.
2 Collins, Jr. attorney for Village of Ridgewood, to
3 John A. Spizziri, Esq., Assemblyman, dated March 12, 1974:

4 Dear John:

5 I have just reviewed A-1030 after notice of
6 a hearing by the Judiciary Committee scheduled for
7 March 14, 1974.

8 I write to you as a municipal attorney with
9 some experience in the operation of local government
10 knowing of your past involvement in this function.

11 It is my opinion that the proposed legislation
12 attacks a thumbtack with a sledgehammer.

13 It is undoubtedly true that the public is
14 entitled to know not only what the actions of its governing
15 body are but the reasons for the decisions behind them.

16 I don't, however, feel that this "right to know"
17 includes the right to be present at every session of a
18 governing body acting in consideration of public business.
19 One of the purposes of an "executive" or "closed" session
20 of a governing or other municipal body is to allow the
21 exchange of ideas and the statement of positions which may
22 not only be illformed but even hypothetical or "devil's
23 advocate" in nature.

24 Again some issues will evoke emotional
25 exchanges which the participants will later regret.

1 Nevertheless, these exchanges have a definite value in
2 that they offer the members an opportunity to test their
3 positions with candor and to the full extent of their
4 feelings on the issues. To open these sessions to the
5 public would only result in inhibiting this kind of debate.

6 There is a phrase in Section 2 of the bill
7 which is particularly misleading. It is, "...that secrecy
8 in public affairs undermines the faith of the public in
9 government...". Whether deliberate or not the draftsmen
10 have confused "privacy" with "secrecy". The former can
11 serve a useful purpose in advancing the public interest,
12 as I have indicated, while the latter suggests invidious
13 activity not warranted under the circumstances.

14 "Public trust" is a two way street. Most
15 elected officials deserve the trust of their constituents
16 and have been elected to effeciently and expeditiously
17 conduct their various duties. To place them in a fishbowl
18 will seriously impede these functions.

19 Very truly yours, Charles C. Collins, Jr.
20 Attorney for Village of Ridgewood.

21 MRS. ANN LEVINE: I'm Ann Levine, Vice-President
22 of the State Board of Directors of League of Women Voters.
23 With me is Ethel Daum, President, Medford Lakes League of
24 Women Voters, and Nancy Venzlowsky, Chairwoman, Medford
25 Lakes Observer Corp.

1 We have 97 local leagues in the state, with about
 2 9,000 members. At least 52 of these 97 leagues have
 3 members observing local government bodies and reporting
 4 to their membership in the community on a regular basis.
 5 Most of the other leagues do observe their government
 6 bodies, but they are not quite as organized as these
 7 52.

8 We asked one very representative league, whose
 9 experience I think is typical in New Jersey, to come and
 10 give a short statement as to the kinds of problems they
 11 run into and a recommendation they want to make. After
 12 that I would like to make a couple of very brief technical
 13 comments about particular clauses in the bill, and that
 14 would be the extent of our testimony today.

15 Nancy Venzlowsky.

16 (MRS.) NANCY VENZLOWSKY: I am Nancy Venzlowsky,
 17 of the Medford-Medford Lakes League of Women Voters and
 18 Chairwoman of our Township Observer Committee. We are
 19 currently observing our Medford Township Committee, Planning,
 20 Zoning, Health and School Boards which meet publicly once
 21 a month. The Central Record is our officially recognized
 22 newspaper and is published weekly.

23 Our observations have led us to conclude that
 24 deliberation on issues which affect the public good is often
 25 done in private session. Examples are numerous, but just

1 a few will be mentioned here.

2 Our last Zoning Board meeting was interrupted
3 several times to caucus. Planning Board and Township
4 Committee meetings have, on occasion, started late for
5 the same reason. When asked for reports to the assembled
6 public body our Committeemen have had little or nothing
7 to say and, at times, expressed preference for a private
8 meeting.

9 At most of our meetings open to the public we
10 have noted that the vote is cast with little or no discussion
11 indicating to us that deliberation has taken place elsewhere.
12 We have also witnessed members abstain from voting due
13 to some financial interest, but the public has had no
14 opportunity to see whether or not this individual has
15 influenced the outcome of the final vote. This lack of
16 communication with the public has only served to increase
17 suspicion and doubt as to the personal integrity of those
18 involved.

19 Increasing taxes are of concern to all of our
20 residents in Medford Township; yet, our local budget which
21 took four months to prepare was open for discussion
22 approximately one and a half hours. Many residents left
23 the meeting feeling that the die had been cast and their
24 recommendations fell on deaf ears.

25 For the reasons noted above, members of the

1 League of Women Voters Township Observer Committee welcome
2 the introduction of A-1030,, but wish to add the following
3 recommendation:

4 1. In the interest of public awareness, we
5 urge our legislators to require that agendas of forthcoming
6 meetings be made available to the public and the news
7 media upon request.

8 That concludes my testimony.

9 ASSEMBLYMAN HAWKINS: Who is next?

10 (MRS.) ETHEL DAUM: We have found this to be
11 such a problem in our own township, the unhappiness of
12 our local citizens, that our own local league has been
13 considering these problems ourselves to see what we can
14 do.

15 ASSEMBLYMAN HAWKINS: Are all three of you going
16 to present testimony directly, or is that the extent of
17 it?

18 MRS. LEVINE: That's the extent of theirs. I
19 wanted to make a couple of technical comments on the
20 definitions.

21 ASSEMBLYMAN HAWKINS: Could you make your comments
22 and then we will allow questions.

23 MRS. LEVINE: Yes. In reading the definition of
24 "meeting," that's on page 2, in Section 3b, it seems to be
25 that that definition might well apply to a League of Women

1 Voter's meeting, at which we invited, let's say, members
2 of the Judiciary Committee--

3 ASSEMBLYMAN HAWKINS: I'm sorry, which paragraph,
4 which page?

5 MRS. LEVINE: Page 2, Section 3b, about the middle
6 of the page, the definition of "meeting...any gathering
7 attended by, or open to, all of the members of a public
8 body, held with the intent, on the part of the members of
9 the body, to discuss or act upon public business."

10 It seems to me that if we in fact invited the
11 members of this committee, say, to an open League meeting
12 to discuss a bill like this, or some other matter before
13 your committee, that would fall under the definition of
14 this law.

15 ASSEMBLYMAN HAWKINS: Is there an objection to
16 that?

17 MRS. LEVINE: Not particularly. But I wonder
18 if that's the intent of this legislation. There is a problem
19 when you get to Section 5 on the next page, where it says,
20 "At the commencement of every meeting of a public body the
21 person presiding shall announce publicly, and shall cause
22 to be" put in the minutes all this business about the
23 notification of meetings. In that case, who is supposed to
24 give the notice? Would that be the chairman of the committee
25 or the president of the League of Women Voters?

1 It seems to me that you have to rework the
2 definition in here somehow.

3 Most of the other statements we would have
4 to make about this bill would apply to its effect upon
5 the legislature, and our views on that I think are well
6 known to at least one member of this committee, Mr. Doyle,
7 who is chairman of the Rules Committee, who sat and listened
8 to our testimony on that last Friday, and I'm not going
9 to go into that in any great detail. A lot of the
10 comments we would have were in that testimony and in the
11 testimony of other witnesses who have testified today.

12 ASSEMBLYMAN HAWKINS: A point well taken.

13 Any questions?

14 ASSEMBLYMAN GREGORIO: Just one question to the
15 young lady who made her statement.

16 Do you think it would be necessary to open
17 a conference or caucus, or whatever you want to call it,
18 a private meeting, or just stop limiting the time at
19 the public meetings? I understood you to say that
20 on the budget meetings, as in our city, we have budget
21 meetings where the individual department heads for months,
22 and yet we do have public meetings on the budget, but we
23 don't limit the time or the conversation of questions or
24 recommendations at all. Do you think it's necessary for
25 the public to be at budget meetings with departmental heads

1 and foremen and so forth? Do you really feel that would
2 be necessary when there is no limit of time as to the
3 questions that you're able to ask at the public meeting?

4 MRS. VENZLOWSKY: As I said, I think the
5 committee felt that they work very hard and long to present
6 a good budget, and perhaps the problem was that nobody
7 knew whether or not the die had been cast. They had
8 already decided what the budget was going to be; and
9 hearings or not, that doesn't seem to matter.

10 ASSEMBLYMAN GREGORIO: That may be, but in
11 general, do you think as long as it's advertised you have
12 the budget in advance and your organization is able to
13 study it and then come to two public meetings and ask
14 all the questions you want, whether it lasts until
15 midnight or one o'clock in the morning, that that would
16 be sufficient?

17 MRS. VENZLOWSKY: It's helpful to understand
18 the budget, but it doesn't mean that anything is going to
19 be changed.

20 ASSEMBLYMAN GREGORIO: We are not going to change
21 that by this law, either.

22 MRS. LEVINE: One of the main concerns that the
23 League has is the accountability of its individual
24 representatives. Each of the committee members in that
25 case is coming up for election sometime and the people

1 are concerned about how they operate in their jobs, and
2 sitting and listening to testimony at a public hearing
3 is not necessarily a very good indication of that.

4 ASSEMBLYMAN HAWKINS: Are there any other
5 questions?

6 Are there any other comments you wish to make?

7 MRS. LEVINE: Not today.

8 ASSEMBLYMAN HAWKINS: On behalf of the committee,
9 I would like to thank you for coming and presenting your
10 side of A-1030. Thank you.

11 MRS. LEVINE: We are interested in hearing
12 everybody else, too.

13 J. M. LIEBMAN: My name is J. M. Liebman, I'm
14 an Assistant County Counsel in the Hudson County Law
15 Department.

16 I have been asked by my superior Mr. Geronimo,
17 County Counsel of Hudson County, to attend this meeting
18 and present the views as he has gathered them from the
19 governing body of the County of Hudson, which is, of course,
20 the Board of Freeholders. Mr. Geronimo apologizes for
21 his not being able to attend, but unfortunately today
22 is the day that the Board of Freeholders holds its open
23 public freeholders' meeting.

24 I would just like to make some brief comments
25 concerning this legislation at the outset so that we

1 don't belabor many points already discussed.

2 I would like to adopt, on behalf of the Hudson
3 County Board of Freeholders, and join in the remarks of
4 Mr. Hayser, from the Township of Dover, since many of his
5 remarks would equally apply to the governing body of the
6 County of Hudson, or any other county, for that matter,
7 as it would apply to his township, being the Township of
8 Dover.

9 The basic objection that the County of Hudson
10 public officials have to this particular proposed legislation
11 are the definitions in the Act under Section 3 and the
12 subdivisions thereof: a, b, c, and d. It would appear
13 from these definitions in the subdivisions of the proposed
14 legislation that a caucus meeting, which is a usual thing
15 held in county government prior to a regular public
16 freeholders' meeting, would not be permitted under this
17 legislation. It is the County of Hudson's feeling that
18 a caucus meeting is a valuable tool in the operation of
19 county government, in that it affords an opportunity to
20 the governing body of the county at that time to have informa
21 discussion concerning matters which will be placed on the
22 agenda at the public meeting. It is our feeling that to
23 permit--

24 ASSEMBLYMAN HAWKINS: Pardon me, sir. When you
25 say, "it is our feeling," who is "our"?

1 MR. LIEBMAN: The governing body of the County
2 of Hudson.

3 ASSEMBLYMAN HAWKINS: You mean the entire Board
4 of Freeholders?

5 MR. LIEBMAN: Yes. It is the Board of
6 Freeholders' feeling that this is an invaluable tool in
7 the operation of county government, and that to permit
8 the public to attend such a meeting would be to limit the
9 debate and open and free discussion by the governing body
10 of the county. It would have the effect of causing a
11 county official on the Board of Freeholders to not openly
12 say what is on his mind concerning a pending matter before
13 the Board of Freeholders--

14 ASSEMBLYMAN HAWKINS: What type of matter wouldn't
15 he be allowed or wouldn't he be able to?

16 MR. LIEBMAN: The reason I say this, he might
17 be intimidated by somebody who is at the meeting. He might
18 be afraid of hurting somebody else's feelings who might
19 be there, if a matter affects that particular individual,
20 or a group of individuals. I just say that it would
21 limit the public's attendance at a caucus meeting,
22 certainly, would limit an official's ability to speak
23 openly and freely and say what is on his mind concerning
24 a particular topic that might be before the board. It
25 could be embarrassing for him to say certain things. He

1 might not want to say it because he does not want this
2 particular individual or group to know his feelings in
3 depth on a particular matter. They will find out what his
4 feelings are when he votes at the public meeting after
5 public discussion on the matter.

6 ASSEMBLYMAN HAWKINS: Let me ask you this, sir:
7 What is the problem in a public official making his feelings
8 known?

9 MR. LIEBMAN: In depth? I think there is a
10 problem, because, as was brought up before, the judiciary
11 makes certain decisions concerning how they feel and how
12 they are going to decide a particular case. I think the
13 same rule and the same feelings should be afforded to
14 a public official who may be a freeholder of a county,
15 he may decide a matter on things that he doesn't want to
16 make known publicly.

17 ASSEMBLYMAN HAWKINS: The Judiciary Committee
18 of the Assembly holds all of its meetings open. What would
19 be the difference between your board of chosen freeholders
20 and the decision-making process they have to go through
21 and the decision-making process that must take place by
22 the committee sitting before you?

23 MR. LIEBMAN: I think that the determinations
24 made by the County Board of Freeholders are different in
25 scope and nature..

1 ASSEMBLYMAN HAWKINS: What is the difference,
 2 sir? What is the difference that should require them
 3 to keep their meetings private, different than our
 4 Judiciary Committee, for example?

5 MR. LIEBMAN: Let me say one thing: we do have
 6 public meetings twice a month at which the public, any
 7 member of the public is free to attend and voice their
 8 opinion concerning a matter that is under discussion
 9 at that particular meeting. However, in order to discuss
 10 these things openly and freely among the freeholders,
 11 they do have caucus meetings prior to the regular public
 12 meeting that they hold and they discuss their views
 13 concerning certain things, and a determination is not
 14 made at that particular point. They obtain and get the
 15 views of other freeholders on the matter. They discuss
 16 it openly and in depth. And I feel that since no
 17 determination is finally made at that time, the determination
 18 is only made after an open public meeting, which is the
 19 Board of Freeholders' meeting, that this particular
 20 legislation is superfluous.

21 ASSEMBLYMAN HAWKINS: What this committee is
 22 trying to determine, sir, is if there is any valid
 23 reason for allowing caucus meetings to remain private at
 24 the county level, at the municipal level, or at the state
 25 level. And if there is not, then why shouldn't the public

1 be entitled to know what is going on.

2 MR. LIEBMAN: Because I think it has the effect
3 by the attendance of the public of inhibiting free debate
4 and open thought and discussion by members of a governing
5 body as to a particular topic.

6 ASSEMBLYMAN HAWKINS: Is that because the
7 governing members are afraid, for whatever reason, to let
8 the public know what is on their minds, the public that
9 elected them?

10 MR. LIEBMAN: That could be one of the reasons,
11 that could be among the reasons.

12 ASSEMBLYMAN HAWKINS: Is that a valid reason?

13 MR. LIEBMAN: I'm not a freeholder. I can't
14 really speak for the freeholders what is on their minds.
15 But as a general proposition, I feel it's a valid
16 proposition that if the public is invited to a caucus
17 meeting many members of the board of chosen freeholders
18 might be inhibited in truly expressing their views openly
19 and giving their thoughts through free debate to other
20 members of the board of chosen freeholders.

21 ASSEMBLYMAN HAWKINS: Pardon my ignorance, but
22 I thought freeholders are elected by the people,
23 representing the people.

24 MR. LIEBMAN: They are.

25 ASSEMBLYMAN HAWKINS: Why wouldn't they be

1 responsible to the people and why wouldn't the people
2 be allowed to know what they're doing?

3 MR. LIEBMAN: They are responsible. They are
4 responsible in that they have public meetings at the present
5 time twice a month at which matters are discussed openly
6 together with the public, who expresses their views before
7 a determination is made.

8 ASSEMBLYMAN HAWKINS: What valid reasons do you
9 have to present to this committee that the process of
10 government itself would be inhibited by allowing a public
11 meeting? I am not particularly concerned with a timid
12 freeholder not wanting somebody to hear what is on his
13 mind. Government is for the people, not for those who
14 govern. I'm trying to determine in what manner the
15 government of the people is going to be inhibited by the
16 public meeting.

17 MR. LIEBMAN: Well, in this legislation, first
18 of all, you have penal provisions where an official who
19 might act, according to this legislation, by not having
20 a public meeting to discuss a certain topic, that he
21 is guilty of being a disorderly person.

22 ASSEMBLYMAN HAWKINS: So, therefore, you're
23 saying--

24 MR. LIEBMAN: A freeholder is human. I can
25 envision a situation where every time a matter is to come

1 up before the Board of Freeholders for them to act where
2 they will seek a legal opinion as to whether or not
3 that should come under the definition of being open to the
4 public or not open to the public. Once given a legal
5 definition, the freeholder can't assume that the legal
6 position taken is correct or improper, because sometime
7 in the future a political dissident or person who doesn't
8 like a particular freeholder could go to court and bring
9 an action in the superior court under the provisions
10 of this legislation to have that particular action declared
11 void because he may have heard a freeholder after a
12 freeholders' meeting with all other freeholders invited
13 to lunch discussing something in private that should
14 have been public. And I submit that the provisions of this
15 proposed legislation are unrealistic.

16 ASSEMBLYMAN HAWKINS: Let me suggest, then, you
17 may be correct that the bill needs sprucing up and you
18 may even have a point that the possibility of being
19 judged disorderly person may inhibit certain actions on the
20 part of a public official. But sprucing up the bill and
21 possibly even doing away with the provision of saying what
22 is a disorderly person, what valid reason is there for
23 a public official not to make his feelings known to the
24 public about why he is doing what he is doing.

25 MR. LIEBMAN: Well, there are provisions that

1 present proposed legislation caucuses would not be permitted
2 as they presently exist.

3 I feel that the present proposed bill in its
4 present form would lead to innumerable lawsuits which would
5 place for the time of the pendency of those lawsuits a
6 cloud upon actions that had already been taken by public
7 officials at a meeting.

8 I think a situation was brought up, an example
9 where a town council awarded a contract to a contractor
10 and within 45 days a person could attack that as not
11 having been done in the public domain, no public discussion,
12 and the road is already built. What would happen in other
13 situations where a governing body of either a county or
14 a municipality thinking that they acted according to the
15 provisions of this present legislation passed a resolution,
16 and a third party relying upon that resolution acted upon
17 it, and then 44 days later some member of the public, because
18 he may have heard the freeholders talking at lunch about
19 this particular thing, brings an action in the superior
20 court to void that particular resolution? I feel that this
21 is unreasonable, and I feel that there should be some
22 better solution to this problem than this present
23 legislation.

24 Listening to the remarks given by the sponser of
25 this particular legislation, it would appear to me personally

1 that the legislation is misguided and misdirected in
 2 certain respects. The sponser of the bill mentioned
 3 the public mistrust of the public officials. I imagine
 4 he is referring to a certain extent to Watergate and the
 5 recent situations in the Governor's office in the State
 6 of New Jersey.

7 The bill as it is presently written is misguided
 8 because it wouldn't remedy those kinds of situations
 9 because those types of activities took place in the
 10 executive branch of the government. The bill in its
 11 present form doesn't apply in any way to any executives
 12 in government, but rather it appears that due to the
 13 public mistrust because of Watergate or other things that
 14 may have occurred in this state in recent times the
 15 municipalities and the counties and local governments
 16 are bearing the brunt of this public mistrust and that,
 17 in my view, the legislation is misguided and misdirected
 18 because it wouldn't remedy the types of public mistrust
 19 that are referred to by the assemblymen who sponsered this
 20 bill, and it's filtering down to the local governments
 21 on the county and municipal level unfairly.

22 I think I have concluded.

23 ASSEMBLYMAN HAWKINS: Thank you very much.

24 Any questions of the board?

25 ASSEMBLYMAN GREGORIO: Not so much a question,

1 Mr. Chairman, but more of a statement.

2 I think it was rather difficult for anyone to
3 answer the question as what could possibly come up at
4 a conference or caucus session that shouldn't come up
5 at a public meeting. Even though I am against that part
6 of the bill, I sat here trying to think of what could
7 possibly come up, and I couldn't give an answer without
8 sounding like I wanted to do everything in secret. But
9 I think it would be special interest groups that would be
10 more likely to attend the conference or caucus sessions,
11 whereas more of the general public attend the open, the
12 regularly scheduled open public meetings. And, therefore,
13 I think, for example, if a municipality has a majority
14 of one party or another, perhaps the whole governing
15 body was Republican, perhaps it might be a group of
16 Democrats that attended those conference sessions and
17 would just by their being there would slightly, I think,
18 be a natural thing to intimidate some of the things the
19 people might say if they weren't there, but they would be
20 willing to vote in that favor or say it at the regularly
21 scheduled open public meeting. And I'm sorry to have to
22 have the chairman or any of us put in that particular
23 spot. It's a difficult question to answer.

24 MR. LIEBMAN: I understand.

25 Just additionally, I would say almost everything

1 comes up at a caucus meeting that's discussed by the
2 members of the governing body would come up at a public
3 meeting if it was placed in the agenda as public business.

4 ASSEMBLYMAN HAWKINS: Any other questions?

5 ASSEMBLYMAN KARCHER: As Assistant County Counsel,
6 in line with what Mrs. Irwin testified to earlier, with
7 regard to this 45 day provision for the bringing of an
8 action in lieu of prerogative writ, are you familiar
9 at all with the sale of bonds, county bonds, municipal
10 bonds?

11 MR. LIEBMAN: To a certain extent.

12 ASSEMBLYMAN KARCHER: The bond market fluctuates
13 up and down. Could you envision a situation where a bond
14 ordinance or bond resolution, in the county's case,
15 authorizing the sale of bonds, what would happen to the
16 marketability of every bond ordinance, or bonds authorized
17 in the ordinance? Would it impair the obligations under
18 their--could you conceive of any bond counsel being
19 willing to give an opinion?

20 MR. LIEBMAN: No, because if there is a cloud
21 of suspicion for a period of that 45 days within which
22 the action could be brought, I feel it would inhibit the
23 sale of those bonds within that period of time.

24 ASSEMBLYMAN KARCHER: And the bond market changes
25 as much as a point a month, doesn't it?

1 MR. LIEBMAN: Yes.

2 ASSEMBLYMAN KARCHER: Bonds could have been sold
3 without cloud of encumbrance or hypothecation, or anything
4 else, at a given day, but the 45 days might see the bond
5 market a point higher?

6 MR. LIEBMAN: I would agree.

7 ASSEMBLYMAN KARCHER: Or a point lower.

8 MR. LIEBMAN: Yes, either way.

9 ASSEMBLYMAN HAWKINS: If there are no other
10 questions, Mr. Liebman, I would like to thank you very
11 much.

12 MR. LIEBMAN: Thank you.

13 ASSEMBLYMAN HAWKINS: Next person on the list
14 is Mayor Arthur J. Holland, or the City of Trenton.

15 MS. PATRICIA L. DONATH: He is unable to make
16 it. He is going to submit a written statement.

17 ASSEMBLYMAN HAWKINS: All right. Next person
18 on the list is Morgan R. Seiffert, for the New Jersey
19 Press Association.

20 HARRY ANDERSON: My name is Anderson. Mr.
21 Seiffert is gone.

22 ASSEMBLYMAN HAWKINS: Are you going to testify
23 in his place?

24 MR. ANDERSON: Yes.

25 I'm a past president of the New Jersey Press

1 Association, an organization comprised of all of the
2 daily and most of the weekly newspapers in New Jersey.

3 We support the passage of Assembly Bill 1030 in
4 the interest of strengthening the public's right to know,
5 the activities of governmental bodies; although, we admit--
6 at least, I admit after hearing some of the testimony this
7 morning, there might be some technical changes.

8 The Association's only reservation is to the
9 notification of newspapers. It feels that such notification
10 should be through public notice, or legal advertising,
11 if you will.

12 Our counsel, Mr. Seiffert, was here this morning.
13 He has a short statement, and also some suggested changes
14 in Section 3, which he thinks might cover our objections
15 or might clarify the bill.

16 There was earlier testimony today by the man
17 from Toms River, I think one of the assemblymen brought
18 the matter up, on the introduction of ordinance and
19 passages on first reading without any adequate notice
20 prior to the introduction and passage on first reading.
21 Now, the defense was that, well, they can object to it
22 on second reading. But I think--and speaking for the
23 Association--that people ought to have an opportunity to
24 object to it perhaps on introduction. There are too
25 many public bodies in the State of New Jersey that give

1 lip service to the public's right to know. If it were
2 not for the secrecy with which many public bodies go
3 about their business, particularly in the affluent suburbs
4 of New Jersey, there probably would be no necessity for
5 this legislation.

6 As a newspaperman, and as resident of Morris
7 County, I have seen many municipal governing bodies
8 conduct business in a community as if it were a family
9 owned business, sort of father knows best attitude,
10 if you will, so much so that in my own community where
11 for many, many years, since 1932 or 1933, it was dominated
12 by one party--and despite the Mayor of Chatham's statement
13 this morning that people like it, my community is right
14 nearby, we now have the other party in the last two years
15 has taken complete control--the absence of resident
16 spectators at council meetings, and other meetings, does
17 not always mean a lack of interest.

18 Harry Green, who is a very well known libel lawyer
19 in the State of New Jersey, has said that newspapers are
20 the public's eye at such meetings, and the state newspapers
21 in that role believe strongly in the public's right to know.

22 I would like to read you Mr. Seiffert's statement.

23 "The New Jersey Press Association is of the
24 opinion that there is no clearly defined distinction between
25 Section 4 of the Bill, which apparently provides in the

14
1 main for special meetings and Section 10 which provides
2 for regular meetings.

3 "Some wording should be added to make it patently
4 clear that no notices are required for regular meetings as
5 provided in Section 10, except as otherwise required by
6 statute.

7 "The present provisions of Section 3 e providing
8 notice to the public which is the major protection to
9 the public interest that the bill is designed to protect
10 is entirely inadequate.

11 "The posting of a notice in a public office is
12 ordinarily viewed by few of the public except public employees
13 who are regularly in the governmental office involved.
14 Citizens do not go, for example, to the county seat to look
15 for posted notices. It is unrealistic. Likewise the
16 provision for filing the written advance notices of the
17 meeting with the municipal or county clerk or secretary
18 of state, as the case may be, is of no value to the
19 public except for perhaps possible reference in order to
20 obtain accuracy after notice has been otherwise actually
21 received in some other manner.

22 "Merely mailing the proposed notices 72 hours
23 in advance to two newspapers is a 'hit or miss' method of
24 public notice. There may or may not be a newspaper account
25 of the proposed meeting.

1 "While newspapers do have an interest in
2 publishing the news there may or may not be a news story
3 published in sufficient time to acquaint the public for
4 any number of reasons: the mail may not be received in
5 time at all; such mail may be lost or overlooked in the
6 news' or editor's office or because of other exigencies
7 in the newspaper operation the story may not be published
8 at all.

9 "The main body politic which is interested in the
10 process of the government are attuned to looking in the
11 newspapers for public notices which are required to be
12 published by innumerable statutes providing for
13 publication of official legal notices. This has been the
14 regular method utilized for more than a century and there
15 is no substitute for requiring publication in newspapers.
16 Newspaper legal notice must be mandatory.

17 "If such amendments are made, it would hardly
18 seem necessary to include Section 11 providing for mailing
19 notices to any person who may request the same. This
20 may be a very burdensome procedure and the failure to mail
21 such notices may vitiate very necessary emergency action.

22 "It is recommended that Section 11 be deleted."

23 Accompanying this, Mr. Seiffert has his suggestions
24 as to how this might be amended, and I will give them
25 to the stenographer.

1 That is the end of my testimony.

2 ("Proposed Amendments to the Assembly Bill No.
3 1030 submitted by New Jersey Press Association with respect
4 to Public Notice.

5 "Amend Section 3 containing definitions as follows:

6 Page 2, Line 32, add definition of 'newspaper;'
7 e, 'newspaper' shall mean a legal newspaper
8 as defined by N.J.S. 35:1-2.1 and 2.2.

9 "NOTE: This addition to the definitions will change Section
10 3 e to Section 3 f.

11 Amend Section 3 e (new f) as follows:

12 "'Adequate notice' means written advance notice
13 of at least 72 hours, giving the time, date and
14 location of proposed meeting or meetings, (1)
15 prominently posted in at least one public place
16 reserved for such or similar announcements (2)
17 published in at least two newspapers in the
18 State of New Jersey and circulating in the
19 municipality in which the proposed meeting is
20 to be held; in the case of a state body it shall
21 be published in at least two newspapers one of
22 which shall be published in the municipality in
23 which the meeting is to take place and if there
24 be no such newspaper published therein then in
25 lieu thereof in a newspaper published in the State

1 of New Jersey and circulating in said municipality;
2 and in the case of a county body in at least two
3 newspapers published in the State of New Jersey
4 and circulating in the county at least one of which
5 newspapers shall be published in said county, and
6 if the county body has designated an official
7 newspaper or newspapers, the notice shall be
8 published in at least one of such newspapers; and
9 in the case of a municipal body in at least two
10 newspapers published in said municipality and if
11 there be no such newspaper published in said
12 municipality or if only one such newspaper is
13 published therein then in lieu thereof in a
14 newspaper or newspapers as the case may be
15 published in the State of New Jersey and
16 circulating in said municipality, and if the
17 municipal body has designated an official
18 newspaper or newspapers the notice shall be
19 published in at least one of such newspapers; and
20 (3) filed with the clerk of the municipality, or
21 the clerk of the county or the Secretary of State
22 in the case respectively of municipal, county
23 or other public bodies.")

24 ASSEMBLYMAN HAWKINS: Thank you very much.

25 Any questions?

1 Assemblyman Karcher.

2 ASSEMBLYMAN KARCHER: You're very strong on the
3 idea there should be legal notices--

4 MR. ANDERSON: Well, the next question is, are
5 we thinking of revenue, and I am not thinking of revenue.

6 ASSEMBLYMAN KARCHER: I'm sure.

7 MR. ANDERSON: I worked for the Newark News for
8 40 years and I never thought about advertising in the
9 Newark News. Maybe that's the reason they're out of
10 business.

11 ASSEMBLYMAN KARCHER: It is a fact, though, that
12 legal notices are the highest scaled revenue source,
13 outside of political advertising?

14 MR. ANDERSON: I don't think that's true.

15 ASSEMBLYMAN KARCHER: Aren't they charged for
16 on a line basis?

17 MR. ANDERSON: They're charged on a line basis,
18 which is set by the legislature.

19 ASSEMBLYMAN KARCHER: Legal publication, in order
20 to be a legal newspaper, and to qualify for an ad in the
21 paper for that type of advertising, there are requirements
22 set by statute.

23 MR. ANDERSON: I don't know whether that's true
24 or not.

25 ASSEMBLYMAN KARCHER: That's under Title 25, I

1 believe. It's the operation of law. Now, the question
2 then becomes within that, does the meeting of the editorial
3 board of a newspaper become a public meeting and people
4 should attend and discuss the--

5 MR. ANDERSON: You have been befogging the issue
6 all day. You have been bringing up the judiciary and the
7 Governor and everybody else. You haven't said you're
8 against this bill, but obviously your attitude to it is
9 that you're against this bill. I think that the Governor
10 is something else again, and I think the judiciary is
11 something else again, and we are not talking about that.

12 ASSEMBLYMAN KARCHER: No. I'm talking about--

13 MR. ANDERSON: Wait a minute. We are talking
14 about meetings of public bodies and counties and the local
15 level. I think you have been befogging the issue, and I
16 have been here all morning and--

17 ASSEMBLYMAN HAWKINS: Sir--

18 MR. ANDERSON: I'm sorry, I shouldn't argue.

19 ASSEMBLYMAN HAWKINS: Thank you. I wouldn't ask
20 that you give your opinion as to what legislators think.
21 We are only interested in your opinion.

22 MR. ANDERSON: Well, that's my opinion, that he
23 is befogging the issue. Is that all right?

24 ASSEMBLYMAN HAWKINS: We are not interested in
25 what the legislators think. We are only interested in what--

1 MR. ANDERSON: Is he a member of the Judiciary
2 Committee?

3 ASSEMBLYMAN HAWKINS: Yes, sir, he is.

4 We are only interested in finding out what you
5 think of the bill.

6 ASSEMBLYMAN KARCHER: I don't take any umbrage
7 at that.

8 MR. ANDERSON: I didn't mean anything personal.

9 I would like to say very quickly, if you send
10 a notice saying there will be a special meeting or there
11 will be a meeting of a council or Board of Adjustment,
12 it might not get into the newspapers. As this man says,
13 our lawyer says, it might get lost. They might not think
14 it has any news value.

15 I think the legislation ought to have something
16 say it's mandatory to publish it, because when you send
17 something to a newspaper, and I'm sure that you have, as
18 a man who has run for office, sometimes it gets in and
19 sometimes it doesn't, or sometimes it gets on the back
20 page or sometimes it gets on the front page, depending on
21 the viewpoint of the paper and/or the publisher, and so
22 forth.

23 So that I would feel, and I think the Association
24 would feel, that the obligation to publish it in the
25 newspaper ought to be a mandatory thing. The only way

1 you're going to make it mandatory is to make it through
2 a legal notice. I don't think that's demanding too much.

3 ASSEMBLYMAN KARCHER: How about the suggestion,
4 then, that a corollary to this legislation, would you
5 recommend then in line with that philosophy that it be made
6 a prerequisite to maintaining their legal status that
7 the print these as a public service, as a prerequisite
8 to them keeping their licensed status of a newspaper?
9 How about that?

10 MR. ANDERSON: First of all, there is no licensed
11 status of a newspaper.

12 ASSEMBLYMAN KARCHER: They become a legal
13 newspaper.

14 MR. ANDERSON: Some places have it and some
15 places don't have a legal newspaper. They designate
16 official newspapers in some communities, and some places
17 they don't.

18 ASSEMBLYMAN KARCHER: What I'm saying, to get
19 that status certain statutory requirements have to be met.
20 Would you have any objection to making it--

21 MR. ANDERSON: You have a second-class mailing
22 privilege and you have to be circulating in the community
23 in which it's covered.

24 ASSEMBLYMAN KARCHER: For so many years.

25 MR. ANDERSON: That's right.

1 ASSEMBLYMAN KARCHER: With a paid circulation.
2 It can't be a precirculation--

3 MR. ANDERSON: That's exactly right.

4 ASSEMBLYMAN KARCHER: Once you meet those
5 statutory requirements, I think there might one or two
6 other ones, you get a status of--you get a legal status,
7 you can accept legal advertising. What I'm saying is,
8 would you have any objection to also making it, in the
9 public interest, once again, with the newspapers, the
10 News Press Association, would you have any objection of
11 having that in as one of the requirements to maintain
12 a legal status that they accept this in the public interest
13 of publishing these notes?

14 MR. ANDERSON: Yes, I would, because I think
15 you're entitled to a newspaper that it must publish this,
16 must publish a free item that somebody is going to need.

17 ASSEMBLYMAN KARCHER: By the same token, you
18 think it should be mandatory.

19 MR. ANDERSON: Yes, I think it should be
20 mandatory.

21 ASSEMBLYMAN KARCHER: But you don't want to
22 assist the municipality in filling that role.

23 MR. ANDERSON: No, and I don't think it's
24 going to cost them that much money; although, I think the
25 lady from New Providence thought it would run them into a

1 great deal of debt. As a matter of fact, the legislature
2 has been increasing under several recent bills the amount
3 on which no bids are necessary, up and up and up and up.
4 I think it's up to \$2,500.00 now.

5 ASSEMBLYMAN HAWKINS: We have one minute left
6 for questioning of this gentleman.

7 ASSEMBLYMAN KARCHER: One last question.

8 The public body is defined herein to mean a
9 commission, authority, board, council, committee and
10 every other group organized under the laws of this state
11 consisting of two or more persons, to perform a public
12 governmental function, et cetera.

13 Now, every newspaper, with rare exceptions,
14 is a public corporation, organized under the statute of
15 this state has a Board of Directors which, once again,
16 is elected pursuant to the statute made and provided, and
17 obviously when they publish a governmental notice they
18 are performing a governmental function, public governmental
19 function. My question is: under that reading and
20 understanding that and knowing now that the majority are
21 public corporations, with officers appointed pursuant to
22 the statute, and they do governmental functions, should
23 the Board of Editors, their editorial board, be open to
24 the public and should they publish a notice when they're
25 going to have their editorial board meeting?

1 MR. ANDERSON: Well, the editorial board meetings?
2 Now we are getting back to the same thing I raised, the
3 question I raised before.

4 ASSEMBLYMAN KARCHER: Whatever the case may be.

5 MR. ANDERSON: A newspaper is not a public
6 entity.

7 ASSEMBLYMAN KARCHER: But under this definition
8 it's organized under the laws of the State of New Jersey.

9 MR. ANDERSON: Of course, it is. So is the
10 Exxon Corporation. Does the Prudential--

11 ASSEMBLYMAN KARCHER: I'm asking you whether they
12 should under the law.

13 MR. ANDERSON: No, I am not arguing that. I
14 don't think we are going to press on this. We are in favor
15 of the bill.

16 ASSEMBLYMAN HAWKINS: I'm sorry, we are going
17 to have to call it short now.

18 ASSEMBLYMAN DOYLE: One question. While it's
19 not my feeling, sir, but I think a number of people have
20 said it, so I think it ought to be asked for the record.
21 It is the feeling that the newspapers which are governed
22 by the principal that man bites dog is news and not the
23 other way around, it would be in favor of this kind of bill
24 because it would give them more business and more conflict
25 and more controversy. Would you respond to that briefly?

1 MR. ANDERSON: I have been an editorial man
2 for more than 40 years. I'm not interested in the financial
3 end of the newspaper.

4 ASSEMBLYMAN DOYLE: That's not what I'm talking
5 about. You're interested in news happening.

6 MR. ANDERSON: That's exactly right.

7 ASSEMBLYMAN DOYLE: News, by definition, generally
8 means conflict and controversy. Is it agreed that you
9 don't see the conflict and controversy at a public meeting,
10 you might see it at a private meeting? Is that the genesis
11 of your support of the bill?

12 MR. ANDERSON: No, not necessarily. I think
13 the public is entitled to know what is going on at private
14 meetings.

15 ASSEMBLYMAN HAWKINS: Thank you, sir.

16 Paul Comiskey.

17 PAUL COMISKEY: I'm Councilman Paul Comiskey,
18 Vice-President of Township Council of Piscataway, New
19 Jersey, located in Middlesex County.

20 I come here today particularly to suggest some
21 areas of amendment to this bill. At first glance the
22 bill's nature is to provide any qualifications or opposition
23 to certain points of it is almost like sounding like you're
24 against faith, God and motherhood. But I don't feel this
25 is the case, that this bill as written goes entirely too

1 far, imposes an excessive burden upon local municipalities,
2 which often doesn't come to bear when you first read it.

3 I am particularly disturbed, as are the majority
4 of the councilmen in my township, with a provision in this
5 bill which requires 72 hour advance notice of the agenda.
6 We feel this is much too restrictive. There are many
7 times when measures come up that have to be put on the
8 agenda as late as Thursday afternoon for a Thursday
9 evening agenda session. They are emergency measures, but
10 they are important to a township; the types of things that
11 if they have to be postponed for an additional two weeks
12 delay can result in additional inconvenience to the public.
13 it can result in waste of money and the like. People want
14 government to respond quickly. Often they say we are
15 bogged down in bureaucracy, why don't you get moving on
16 things faster.

17 Well, if you impose regulations such as some
18 of them in this bill, I think you will help to slow down
19 some of the wheels of local and county government to an
20 excessive extreme.

21 Witness the fact that under the Florida State
22 Sunshine Law, as they call it, they have a full-time
23 assistant state attorney in the State of Florida in charge
24 of hearing complaints of violation of that Sunshine Law.
25 A healthy majority of those complaints involve complaints

1 from people who say I heard three councilmen talking
 2 over a cup of coffee, it was public business and we feel
 3 this is a violation of that law, will you look into it.

4 Many times at our agenda meetings we have thought
 5 of things at the last minute that were important. Councilmen
 6 have brought these things up toward the end of the agenda,
 7 they ask can it be put on for the Tuesday night agenda
 8 session, and gives the following reasons why he feels
 9 they are imperative to move so quickly. When they have
 10 done this, we have rapped it around, explained it, we
 11 answer questions, we get legal opinions. The fact is
 12 sometimes it's not an emergency measure, but it is an
 13 important measure, and we do place it on the public agenda
 14 for Tuesday, and I don't feel that it's out of keeping
 15 with our responsiveness to the public. I think it is a
 16 meeting.

17 The minutes of our agenda meeting are not conducted
 18 by our township. We do keep detailed minutes, of course,
 19 of all public meetings. To impose upon us the requirements
 20 to keep detailed public minutes of all council committees,
 21 of all council agenda sessions, I feel one would add an
 22 excessive burden upon us in paperwork and in typing. You
 23 probably would need a new assistant deputy township clerk
 24 to handle some of this bureaucracy of paperwork. I think
 25 there would be duplication of paperwork. We have things

1 said at the agenda session copied into the minutes and
2 then they would be said at the public meeting and also
3 copied into the minutes and then typed up in duplicate,
4 and I feel this is a waste of the taxpayers' time and
5 money and our own good efforts.

6 We feel technically the three members of the
7 public body working on a council committee might well be
8 qualified as this is a meeting now of the public body.
9 Recently I served for three months as chairman of the
10 Property Maintenance Code Committee, assigned by the
11 council, to draft such an ordinance. We met in a private
12 home of a fellow council member. Conceivably under your
13 bill you would have to invite the general public into that
14 home to help us work on this, or at least listen to what
15 we say.

16 ASSEMBLYMAN HAWKINS: Are you suggesting, sir,
17 that we have a requirement in the bill that all public
18 meetings be held at places convenient to the public to
19 attend?

20 MR. COMISKEY: I'm saying, sir, that if you're
21 going to have open agenda sessions, fine. But if you're
22 going to stretch it and say every time a council committee
23 decides to meet over a cup of coffee or in a snack bar or
24 in a private residence, something of that nature, that we
25 must, one, publish it in advance, and, two, we must invite

1 the general public I think is an excessive extreme, sir.

2 We have recently opened our agenda sessions after
3 they had been closed for some time. However, when we did
4 open them, we did it, one, by resolution, and we qualified
5 in the resolution, as introduced in the public meeting at
6 the last minute, that no member of the public or press
7 would be permitted to speak or otherwise comment during
8 the course of a public session. It was unanimously
9 passed. Council would reserve the right to exclude
10 members of the public perhaps from considering matters
11 involving the following areas: one, personnel; two,
12 settlement of litigation involving the township; three,
13 acquisition of land by the township; and four, such other
14 matters as the council would deem in the best interest of
15 the township will be considered in private.

16 Now, what might be examples of things such as
17 this? I heard earlier a couple of questions in that area.
18 I might submit something such as labor negotiations with
19 the Public Works Union should well-qualify under this.

20 I think when you're negotiating on a contract
21 with the union in a township, if you have the press involved
22 and the public there, and the like, it's quite possible
23 that a lot of these union representatives are going to
24 soapbox, so to speak, and try to get excess amount of
25 publicity for their demands and then use it as perhaps a

1 pressure or bargaining tool upon the municipality and then
2 in addition, in effect, to even add to some of the burden
3 of the taxation, because their demands might well be
4 aired so well in public that we would have to give in to
5 them.

6 Let's face it, we are out to save the taxpayer
7 a few dollars. And if in the negotiations we can argue
8 them down a quarter of a per cent in their labor demands,
9 we are going to do it, because this is going to be reflected
10 in our municipal budget. And we, not they, are answerable
11 to the taxpayers of our township.

12 ASSEMBLYMAN HAWKINS: Sir, specifically--and I
13 hate to interrupt you, but certain questions you have brought
14 up have been brought to our attention by ourselves, and
15 we are interested in them. So if I ask specific questions,
16 it's only because we are interested.

17 With reference to the land purchase contracts,
18 can you go into a little bit more detail about that?

19 MR. COMISKEY: Yes.

20 ASSEMBLYMAN HAWKINS: How it would be possibly
21 harmful in any kind of a way for that to be public.

22 MR. COMISKEY: Well, often we have been negotiating
23 on land that might involve a land swap. It's not always
24 a purchase. It's a swap of land. Sometimes you negotiate
25 with the person himself, have him come in. And he might

1 say, Well, I will be willing to settle for a certain price,
2 you come and see it, and so on.

3 However, at the same time, let's face it, my
4 piece of land I have is also listed maybe with the realtor
5 or I have a neighbor in my area that has requested me
6 to consider a purchase, and if a lot of the figures that
7 are quoted in such negotiations were to come out into the
8 press, the realtors, the neighbor that was interested in
9 inquiring of that piece of land might very well jump on
10 the bandwagon and bring in a lot of pressure and at the
11 last minute the whole deal could fall through. I could
12 see that as one very real practical possibility.

13 I think there are others, as well, but I don't
14 want to be repetitious, and the like.

15 I think areas, such as the condemnation of land,
16 might well be covered in the private agenda session and
17 then be explained at public session.

18 ASSEMBLYMAN HAWKINS: We are interested in knowing
19 what the harm is, the actual harm to the governmental
20 process or to the people by airing this in public. For
21 instance, the last part you just mentioned, condemnation.

22 MR. COMISKEY: All right. This particular
23 point of condemnation is not listed in our resolution. I
24 just happened to throw this out on my own.

25 I think anything involving land can become a very

1 sensitive area. I can foresee instances where you might
2 be able to avoid condemnation of lands by bringing the
3 person in and explaining to him the necessity of it and,
4 yes, we are going to have three or four realtors give you
5 a fair appraisal, will you sell it to us privately so
6 that we don't have to go through this lengthy process of
7 a condemnation of land and legal expertise and legal fees
8 and things of that nature.

9 ASSEMBLYMAN HAWKINS: But specifically in talking
10 about condemning a piece of land, why should that be private

11 MR. COMISKEY: I am saying, sir, that, one, you
12 could bring a person in first and talk to him and explain
13 your reasons for negotiating. However, if he says, I am
14 not going to go that route, conceivably that very evening
15 you might want to discuss, shall we go to the extreme of
16 condemnation of land, even with him present. We might
17 decide to do that. It might be imperative that we get
18 moving on this thing for Tuesday night, at least the
19 initial steps.

20 I am not a labor union representative, I am not
21 a lawyer. I am a public school teacher. So there are
22 many fine points of law that I am not qualified to be
23 involved in. But I do know that the action on the
24 acquisition of the land by the township was a proposal
25 offered by an attorney who is a member of our council and

1 he is much more properly schooled in the law than I am,
2 and I frankly lean on him very often for legal advice.

3 ASSEMBLYMAN HAWKINS: Might I suggest, sir, we
4 would be interested in knowing what harm, if any, there is
5 in the condemnation proceeding being made public.

6 MR. COMISKEY: I am not saying that it's harmful,
7 sir. I'm just saying that in the delicate area of
8 negotiation it's difficult to negotiate in a fishbowl.

9 ASSEMBLYMAN HAWKINS: If it's the attorney that
10 you look to for guidance, would you ask him to please
11 send us a letter or anything showing us his point of how
12 it might be harmful to have a public condemnation or
13 any other kind of hearing.

14 MR. COMISKEY: He might be able to explain it
15 better than I do.

16 ASSEMBLYMAN HAWKINS: Do you have anything else?

17 MR. COMISKEY: Yes, just a couple more points
18 and I will conclude it.

19 I can give you a few specific examples, too.
20 Professional services, such as an architect to design
21 an addition to the new library, we had four architects
22 come in and make presentations on an expansion to our
23 local library. Conceivably, we might decide to hire an
24 architect who isn't the lowest bidder, but it is a
25 professional service, and because he has an outstanding

1 reputation. We have had experience with him in other
2 projects and things of that nature. I think you can
3 negotiate better with professionals on professional services
4 at times, again when their professional bids and negotiations
5 and the like on price are not always being taken down
6 immediately and you read it in tomorrow's newspaper and
7 we haven't even come to a settlement with any of them.

8 I'm also saying that there might be a tendency
9 by some people to stampede with knowing that everything
10 they say might be quoted in the paper and make very lengthy
11 statements. They're going to prolong our agenda sessions.
12 And frankly, I tell you, by 12:30 at night, when I have
13 had a four and a half hour agenda session, I'm ready to
14 go. And I have a feeling, a very real feeling that if
15 everything, every single thing in an agenda session, A to Z
16 is open, I think it would unnecessarily prolong the length
17 of an agenda session.

18 I disagree very strongly with the disorderly
19 persons requirements of this particular Act. Certainly,
20 something like that, not being an attorney, I would
21 constantly have to consult with an attorney. I think when
22 you hold a penalty such as this nature against people who
23 have a clean record, such as myself, we are going to be
24 very careful, perhaps overly cautious at times. We are not
25 trying to avoid anything that we're ashamed of. But to have

1 to be very careful, oh, my God, am I really in violation
 2 of this law, am I going to get a disorderly persons rap
 3 on my record. I think you're going to discourage people
 4 from public service that you really need to attract.

5 I feel, too, that a public office is a public
 6 trust, and none of us feel, certainly in my township,
 7 and I'm sure in the majority of the communities in
 8 New Jersey, the State of New Jersey, that it is in any way
 9 a private domain. I very much resented such an inference,
 10 as I heard earlier, that some of us think it is a private
 11 domain. I have always negotiated very openly and honestly.
 12 I have always defended every vote I have ever taken on any
 13 public issue, and I shall continue in the future.

14 Laws, gentlemen, will not necessarily restore
 15 public confidence in public officials. Constructive
 16 actions alone will. I stand on that record. I believe in
 17 it very firmly. Edmund Burke said that all that is needed
 18 for evil is for all good men to do nothing. There are a
 19 lot of good men in this state that are doing something and
 20 who continue to try to do so, honestly and openly. And
 21 we do feel, and I personally very strongly feel that this
 22 bill goes much too far.

23 ASSEMBLYMAN HAWKINS: Thank you very much.

24 Any questions?

25 ASSEMBLYMAN KARCHER: Just one question.

1 Talking about good men, I take it, your Board of
2 Adjustment is not paid, are they?

3 MR. COMISKEY: No, sir.

4 ASSEMBLYMAN KARCHER: Your Planning Board is not
5 paid, are they?

6 MR. COMISKEY: No, sir.

7 ASSEMBLYMAN KARCHER: Your Board of Education is
8 not paid, are they?

9 MR. COMISKEY: No, sir.

10 ASSEMBLYMAN KARCHER: The Board of Health is not
11 paid, is it?

12 MR. COMISKEY: That's right.

13 ASSEMBLYMAN KARCHER: You feel you have good men?

14 MR. COMISKEY: Yes.

15 ASSEMBLYMAN KARCHER: Is it sometimes difficult
16 to get them, sir, because of the length of meetings as the
17 are?

18 MR. COMISKEY: Yes.

19 ASSEMBLYMAN KARCHER: The controversy in the publi
20 press, does that sometimes discourage them?

21 MR. COMISKEY: Yes.

22 ASSEMBLYMAN KARCHER: You think the increase in
23 controversy in the public press tends to discourage them a
24 little more?

25 MR. COMISKEY: I think so. These bodies have been

1 open to the public when they have actually taken specific
2 action. I think we have had adequate coverage as it is.

3 I think you raised a very good point before,
4 Mr. Karcher, about any kind of a requirement that these
5 agendas be out 72 hours in advance to the press, that they
6 be publicly advertised. And, my God, if we have to pay
7 for those advertisements 72 hours in advance, you're going
8 to see us having to put in our budget every year quite a
9 bit more money for legal advertising than we presently do,
10 and we are working like all get out to shave one or two
11 property tax points off the budget. And we work hours and
12 hours and hours on this type of thing, and then we have to
13 plop it over into additional legal advertising, when it's
14 not necessary.

15 ASSEMBLYMAN HAWKINS: I'm sorry, I'm going to have
16 to call this short, respectfully.

17 MR. COMISKEY: Thank you.

18 ASSEMBLYMAN HAWKINS: I'm going to make another
19 statement now.

20 (Off the record.)

21 ASSEMBLYMAN HAWKINS: I will ask the Honorable
22 Connie Woodruff to please come forward.

23 MS. CONNIE WOODRUFF: Mr. Chairman, I'm probably
24 going to be the most welcome witness you have had today.
25 I'm just going to pass out my statement.

1 Basically, labor is not in agreement with what
2 the sponsors of this bill have included in the bill. We
3 are in disagreement, however, with some of the speakers
4 who have responded, and I think I answered that, perhaps
5 not adequately enough, in my statement. I only do this
6 in the interest of time. You know I like to talk.

7 (The following is the statement by Connie
8 Woodruff, Director Community Relations,
9 International Ladies' Garment Workers' Union,
10 AFL-CIO:

11 Mr. Chairman, Members of the Committee, Fellow
12 Citizens:

13 My name is Connie Woodruff, I am an officer of
14 the International Ladies' Garment Workers' Union, AFL-CIO
15 and Director of Community Relations for the Eastern Region
16 of the ILGWU.

17 In that capacity, I am very involved in organizing
18 union members for political action; in raising their con-
19 sciousness in the political process and in observing the
20 actions of elected officials in the tri-state area of New
21 York, Connecticut and New Jersey.

22 We are most appreciative of the opportunity for
23 our voices to be heard in support of Assembly Bill 1030.
24 There are more than seventy thousand members of the ILGWU
25 who live, work and hopefully are a part of the political

1 process in this state.

2 It is just regrettable the time this hearing is
3 being held prevents scores of them from attending. Just
4 as it prevents thousands of other union members and workers
5 in general from being here to listen to the testimony we
6 have heard from some of the elected officials and others
7 on the public payrolls.

8 The 'public be damned attitude' insinuated by
9 several of the previous speakers; the 'let 'em eat cake'
10 attitudinal arrogance and the veiled suggestion that
11 permitting citizens to have privy to the deliberations
12 of their public officials is 'dangerous' and 'hazardous'
13 is exactly the attitude which has led us to Watergate and
14 to the alarming rate official misconduct in office is
15 growing in New Jersey and throughout states around the
16 country.

17 We want to congratulate Assemblyman Baer and the
18 co-sponsors of A-1030 for having the courage to take the
19 first giant step forward to reform in government. We are
20 certainly hopeful the entire legislative body will follow
21 this lead which we consider vital if we are to restore
22 people's faith in our democratic system.

23 The way a government conducts its business is
24 vital to the life and well being of every citizen subject
25 to that government. HOW government does things is often

1 as important as WHAT it does and consideration of reform
2 of antiquated rules and procedures which have for the most
3 part skillfully screened out participation of people and
4 at the very least observation of government deliberation, is
5 long overdue.

6 After listening to this morning's testimony by
7 opponents of A-1030, who often spoke with forked tongues,
8 we are convinced passage of this legislation is
9 mandatory if we are to avoid future political chaos and
10 that creeping feeling of pervasive corruption in
11 government.

12 The Legislature probably has more influence and
13 control over the quality of our daily lives than any other
14 branch of government. It can and does influence virtually
15 every aspect of our daily lives - often in concert with or
16 most assuredly at the behest of municipal government,
17 bureauracracic agencies and commissions and pressure
18 groups from management and labor.

19 The ILGWU believes that in a democracy the
20 institutions of government and especially the legislative
21 branch, should be as open and as responsive to the people
22 as possible.

23 Given the ferment of the times, there is a certain
24 value to the political inclusion of people. We cannot accept
25 the hypothesis that the more the society introduces new

1 groupings into the decision making process, the fewer
2 decisions are made.

3 It is our contention that the more people are
4 privy to the decision making process, the more interested
5 they will become in the political process; the more
6 accountable public officials; the more judicious the
7 deliberations of those who are charged with the responsibility
8 of enacting laws that eventually affect us all.

9 We feel the time is NOW to reverse the chaotic
10 political climate in our communities, our counties, our
11 states and yes, our federal government. There are
12 increasing demands, and rightfully so, on the part of
13 society to be accepted into the decision making BEFORE
14 rather than AFTER the fact.

15 Perhaps more people than our public officials
16 realize, are aware of the process of a committee or caucus
17 hearing or discussion on a bill which after consideration
18 is either "killed" or "reported out," which means that it
19 will then be debated publically and voted on by the entire
20 body. However, once a bill reaches the floor of either
21 house or the municipal chambers, a number of rules and
22 procedures and other actions may prevent it from being
23 debated and voted on in an open and unquestionably honest
24 way.

25 Isn't important then to hold open public meetings

1 by legislative committees to enable the people to ascertain
2 the manner in which that committee, agency or commission
3 considers bills? Citizens are not "outsiders" spying on
4 the "insiders" but the electorate without whom the
5 public official would not have had an opportunity to serve
6 in the first place.

7 Clearly how our elected and appointed officials
8 arrive at certain conclusions; how they operate in the
9 interest of the people, has a tremendous impact on the
10 ultimate legislation which becomes the law and order
11 responsible citizens are expected to live by.

12 Gentlemen, we say the time has come for us to
13 discard a folkway which has cloaked the deliberations of
14 public officials in total secrecy. This is a folkway
15 which perpetuates the heinous caricature of the smoke-
16 filled-room-fat-cat-politician-with-grubby-paws.

17 We feel a majority of our elected officials do
18 not fit into this pattern, but the continued tradition of
19 operating in the dark, causes far too many of our citizens
20 to accept this myth.

21 The question then is, can any of us afford the
22 continued luxury of benign neglect of the people who have
23 the right to know. The taxpayers who foot the bills for
24 elected officials. Can they continue to be shunted off in
25 a cavalier fashion, by "leaders" more than willing to bring

1 their case to the people on the eve of election day, but
2 perfectly willing to forget there are people to whom they
3 should be answerable between elections.

4 The Vietnam War finally alerted millions of
5 Americans to the realization that to a great extent, they
6 were greatly excluded from important area of decision
7 making simply because political oligarchs refuse to
8 change. But people subsequently objected to the war and
9 the voices were heard around the universe.

10 Black people in the 1950's and 1960's became
11 increasingly impatient with the insensitive assumptions
12 of a white-dominated society and the scars of hundreds of
13 confrontations and conflicts which erupted from Maine to
14 California are still visible in many of our communities.

15 In urging passage of A-1030, we petition our
16 legislators to broaden the base of political participation
17 and to recognize that such action is not a factor to
18 condemn, to fear or to lament; but is an action to
19 understand people do respond when they are made to feel
20 a part of what's happening.

21 In urging passage of A-1030, we challenge our
22 legislators to stand up and be seen in support of
23 participatory politics; to speak up and be heard as voices
24 of reason and for reform in a confused and chaotic society
25 which threatens the destruction of the political process

1 because of lack of populace participation and to heed the
2 prophetic words of the late and great Black American
3 poet-philosopher, Langston Hughes who warned: "Silence
4 is not always golden...sometimes it's just plain yellow.")

5 ASSEMBLYMAN HAWKINS: Is there a Hannibal Cundari?

6 HANNIBAL CUNDARI: I'm Hannibal Cundari, I
7 represent the Bergenfield Taxpayers Association, and I'm
8 an officer in the Federation of New Jersey Taxpayers, in
9 addition to being an officer in the New Jersey Conservative
10 Union.

11 First, I want to commend the sincere pursuance
12 of this committee toward an honest inquiry. One of the
13 things I think that most people fail to mention today
14 is that the need for this bill and what has been said
15 today shows one thing: government must be limited, and the
16 way to limit it is to put a bill such as this through,
17 just enact it. If our elected officials are concerned
18 that they have to hide things from anyone, then certainly
19 it requires further inquiry.

20 For instance, if the meeting between the Governor
21 and those bond agents for the Meadow Land sports complex
22 were to be open to the public, would the taxpayers have been
23 saddled with a pledge to back the bond issue?

24 They mention the local public contract guidelines
25 as a means of pursuing a corrective measure in case of

1 malfunction of government. But this agency, the Division
 2 of Community Affairs, has no enforcing powers, can take
 3 no action whatsoever to pursue the complaints of individuals.
 4 They say that there is paralysis in government action.
 5 Well, maybe that's what there should be. I think that the
 6 public in general would benefit by a law such as A-1030.

7 Now, I will give you some examples in Bergenfield,
 8 recent issues, three recent issues. Were it not for the
 9 tremendous pressure and the arousalment of citizens, the
 10 taxpayers would have been saddled with tremendous burdens;
 11 two requiring fairly high bond ordinance. One was initiated
 12 by us against a swimming pool and that was defeated. That
 13 would have gone through, certainly, if people didn't have
 14 access to certain measures, and it would never have gone
 15 to that extreme if the people were able to attend the
 16 meetings prior to their introduction of the bond ordinance.

17 I would just like to go through a few things in
 18 order to save time. The public bodies today, throughout
 19 the country--

20 ASSEMBLYMAN HAWKINS: Sir, if that's a prepared
 21 statement, as I stated, you can hand that in to us. We
 22 are trying to give everybody an opportunity to speak. If
 23 you have a prepared statement, you would save us a great
 24 deal of time by simply submitting it to us.

25 MR. CUNDARI: Fine.

1 One of the other things that was mentioned, also,
2 the electoral process is sufficient to take care of the
3 misrepresentation, let's say, of governments. Well, this
4 is after the fact. We can nip it in the bud if such a bill
5 were in force. In fact, it seems to me that the only
6 people, the only officials, the only ones to have freedom
7 are the elected officials or their appointees. The people,
8 in general, are the ones that are restrained and restricted
9 and I believe that the elected officials should be the ones
10 to be restrained and restricted, and this bill will assist
11 the people toward more representative government. It will
12 limit their function to certain functions that are proper
13 for government.

14 ASSEMBLYMAN HAWKINS: So you are in favor of the
15 concept of the bill?

16 MR. CUNDARI: I'm certainly in favor of the bill.
17 There might be some modifications, which might be fine.
18 But in general, we needed this for a long time and I
19 trust that it will be favorably considered.

20 ASSEMBLYMAN HAWKINS: Please, sir, allow us to
21 have your statement.

22 (The following is a statement by Hannibal Cundari
23 Gentlemen of the panel: Public bodies today,
24 throughout the Country, comprise the only sector of populat
25 in American which may be said to possess freedom; freedom,

1 that is, by so-called immunity, to rule, to spend and tax
 2 indiscriminately, to plot, to direct lives and control
 3 property of others, to coerce and oppress its constituents -
 4 all at the expense of its victim. Naturally, such
 5 "freedoms" are permissive licenses for injustice rather than
 6 the acceptable non-molesting actions of liberty. Whether
 7 elected or appointed, such bodies have perfected an
 8 impenetrable defense against accountability to their
 9 taxpaying employers and constituents. They ignore their
 10 duty as public servants and act instead as masters.

11 True freedom must be encouraged; but injustice?
 12 No! And the present practice of most public bodies can be
 13 labeled a monopoly of injustice. Citizens seeking public
 14 information are treated with professional evasiveness.
 15 Good citizens who seek the truth and also wish to exercise
 16 their freedom and civic duty are turned away by "closed-door"
 17 policies of bureaucrats. Is it a wonder, then, that public
 18 involvement had diminished? Is it not because public bodies
 19 create and encourage public apathy?

20 It is encouraging that the injustice inherent in
 21 such oppressive and long standing practices is recognized
 22 and in process of rectification. Assembly Bill A-1030,
 23 the "Open Public Meetings Act," is a most necessary step
 24 in the right direction. Far better would it have been if
 25 the conduct and accountability of public officials were such

1 that A1030 would not be needed. Unfortunately, its need
2 is obvious and when enacted into law, will serve all people
3 justly.

4 Right-to-know laws are meaningless if access to
5 public meetings is forbidden. Such access must not be
6 considered a granted privilege but an inherent right of a
7 citizen.)

8 ASSEMBLYMAN HAWKINS: Is there a Louis Bort?

9 LOUIS BORT: My name is Louis Bort. I appear
10 here today on behalf of the New Jersey Institute of
11 Municipal Attorneys. I am one of the vice-presidents of
12 that institute. I am also the municipal attorney for the
13 Township of Livingston, here in Essex County. Others were
14 to appear here on behalf of the institute, but events
15 prevented their doing so, and at the last moment I received
16 a telephone call only on Tuesday. I received these
17 materials, as a matter of fact, a copy of the bill only
18 yesterday, and I do not, because of the shortness of time,
19 have a prepared statement.

20 I assure you, Mr. Chairman, that I will not
21 belabor the points that have been made before. The Act
22 presented by those who opposed the bill, I do not feel I
23 can improve on it. However, I do have one or two remarks
24 I would like to make.

25 As I say, I received a copy of this bill only

1 yesterday--

2 ASSEMBLYMAN HAWKINS: Sir, please. I appreciate
3 the point that you only received the bill yesterday. Could
4 you get to the crux.

5 MR. BORT: My reading of it, particularly the
6 statement of declaration of policy, in paragraph Section 2,
7 leads me to the conclusion that this bill is based upon
8 a false premise, the premise that upon election or appoint-
9 ment to public office that a person thereupon, ipso facto,
10 to use an expression that lawyers like to use, that ipso
11 facto that person becomes a scoundrel; that upon taking
12 his oath of office and commencing his duties he will be
13 either, one, corrupt, or at least dishonest; two, act in
14 a fashion not in the public interest; or three, will act
15 in such a fashion as to cause the public to lose confidence
16 in government.

17 Now, you gentlemen have heard at least three
18 people here today in local government: Mayor Davidson,
19 of Chatham Borough; Mrs. Irwin, on behalf of her township;
20 and the gentleman who testified here this afternoon,
21 whose name I did not get. We have also heard from the
22 Hudson County Board of Chosen Freeholders.

23 Gentlemen, I say on behalf of the institute and
24 on my own behalf that the vagueness of the language in this
25 bill and some of its provisions which have led people here

1 today, who are laymen, to feel, as one person put it--I
2 think the Mayor of New Providence, I think it was--that he
3 resented the language that he becomes a disorderly person
4 is an indication, then, as people read this bill, people
5 in government, whether they be elected officials, whether
6 they be appointed officials, laymen who serve without
7 compensation on our Boards of Adjustment, on our Planning
8 Boards, on our Boards of Health, and in other capacities
9 will hesitate to take appointment or seek election to
10 public office.

11 Assemblyman Karcher before used the words "shield
12 That was the word I was going to use. Others have used
13 similar language. This bill will do more harm than good.
14 I would say for the greater part--there may be a few
15 corrupt public officers--but for the most part on the local
16 level we have honest, hardworking, sincere individuals
17 who give of their time, their efforts, and in a good many
18 cases, of their money.

19 ASSEMBLYMAN HAWKINS: Is it your suggestion that
20 we do away with the bill completely?

21 MR. BORT: Yes, sir.

22 ASSEMBLYMAN HAWKINS: In other words, you don't
23 even want it to be amended?

24 MR. BORT: It should not be enacted, sir.

25 ASSEMBLYMAN HAWKINS: I get your impression very

1 loud and clear.

2 MR. BORT: May I incorporate by reference the
3 remarks that were made by Mayor Davidson, by Mr. Hayser,
4 of Dover Township, and by Mrs. Irwin, I think it was,
5 on behalf of her municipality.

6 ASSEMBLYMAN HAWKINS: Thank you very much for
7 coming out.

8 ASSEMBLYMAN DOYLE: Mr. Bort, if I may. If most
9 of the local officials are honest and sincere--and I agree
10 with that--more than the term most, almost all are honest
11 and sincere--why should they be afraid or in any way
12 inhibited by the presence of A-1030?

13 MR. BORT: Because it would harm their work.
14 That question has been asked many times, and I would like
15 to answer it. I have been a municipal attorney for 21 years,
16 or more, in Livingston. I have attended almost every
17 conference meeting, as we call it. Some people call it
18 executive session, some people call it caucus, whatever it
19 is. At some of these meetings some of the profanities that
20 are used would amaze a good many people. These fellows
21 are letting their hair down as they discuss the issues that
22 are brought before them.

23 ASSEMBLYMAN HAWKINS: Is that necessary to discuss
24 the issue?

25 MR. BORT: Yes, I think it is. That's what they

1 are there for. If they have an ordinance to adopt or
2 not to adopt, it's an issue--

3 ASSEMBLYMAN HAWKINS: But I'm saying, is it neces-
4 to use all kinds of profanity, letting their hair down?

5 MR. BORT: Yes, sometimes, among themselves.
6 It's true, they're human beings, no different than you
7 or I.

8 ASSEMBLYMAN HAWKINS: Is there any other reason
9 why they--

10 MR. BORT: I said sometimes.

11 ASSEMBLYMAN HAWKINS: Is there any other reason,
12 in line with his question, why they should be made to
13 say--

14 MR. BORT: Yes. Let me give you an example,
15 sir. Every municipality has ordinances requiring permits
16 or licenses. We have one that every person apply for a
17 taxi, the driver's license has to be investigated by the
18 police.

19 We had a case not too long ago where the police
20 chief came back with what is called a rap sheet. This
21 particular person had been convicted of atrocious assault
22 and battery. Now, the question is: shall we issue a
23 license to such a person to drive a taxi.

24 The council, in executive session conference
25 meeting, said, Let's call him in, let's see what he looks

1 like, let's talk with him. We did that. He appeared
2 to be a person who had an impecable record otherwise,
3 but he admitted, yes, some eight or ten years ago, while
4 a youngster, he had been in a fight and in self-defense
5 picked up an object, had injured the person he was fighting
6 with and was convicted.

7 ASSEMBLYMAN HAWKINS: That's a very good point.
8 What I think you're trying to say is that in deliberations
9 with confidentially information you think it should not
10 be open.

11 MR. BORT: Yes, certainly. It's true, we have
12 other instances--I thought the gentleman before me was
13 going to mention it--settlement of cases.

14 ASSEMBLYMAN HAWKINS: Quasi-judicial matters?

15 MR. BORT: No. I'm not talking about that.

16 I started a suit yesterday against an individual
17 who while driving a car went off the road and destroyed
18 a fire hydrant that cost my township \$1,800.00 to repair.

19 ASSEMBLYMAN HAWKINS: Are you referring to your
20 legal duties, sir?

21 MR. BORT: Yes, sir. But if I get an offer of
22 settlement, I have no authority to settle without the
23 council's permission.

24 ASSEMBLYMAN HAWKINS: That's a point well taken.

25 MR. BORT: It cost us \$1,800.00. If I get an

1 offer of \$1,500.00, shall I turn it down? Or if they
2 tell me go ahead and settle at 16, but try to get 17--

3 ASSEMBLYMAN HAWKINS: So what you're suggesting
4 is that the confidential relationship between you, as the
5 attorney, and client should remain confidential?

6 MR. BORT: I agree that that should be so.

7 I once wrote an opinion and the matter came to
8 litigation and my adversary referred to the opinion. He
9 got a copy of it and he said--he quoted somebody, I don't
10 know who the author was--

11 ASSEMBLYMAN HAWKINS: Mr. Bort, we appreciate
12 your points on that.

13 MR. BORT: On behalf of the New Jersey Institute
14 of Municipal Attorneys, we oppose this bill in toto.

15 ASSEMBLYMAN DOYLE: Mr. Bort, would you be in
16 favor of repealing 40:49.2 about a public hearing on the
17 second reading of the ordinance?

18 MR. BORT: No, sir.

19 ASSEMBLYMAN DOYLE: What is the difference between
20 the second reading and having them discuss it before it
21 gets to first reading, or at least letting the public hear
22 the discussion that got it that far?

23 MR. BORT: Because it's representative. If you
24 have discussion on the first reading, the statute you refer
25 to requires publication in newspaper and consideration of

1 a second hearing. The same people are going to appear,
2 make the same arguments, and nothing is going to be
3 accomplished by it.

4 ASSEMBLYMAN HAWKINS: Thank you very much.

5 (Off the record.)

6 ASSEMBLYMAN HAWKINS: George Hagemeister

7 GEORGE HAGEMEISTER: I'm here.

8 ASSEMBLYMAN HAWKINS: And we have one other
9 listed prior to hearing the Honorable Assemblyman Baer.

10 What is your name?

11 MS. LILLIAN SINGLE: Lillian Single.

12 ASSEMBLYMAN HAWKINS: That's it. Then I think
13 we will have concluded.

14 MR. HAGEMEISTER: I have a prepared statement.

15 I am George Hagemeister. I am a councilman
16 and former Mayor of Sparta and immediate Past President
17 of the New Jersey State League of Municipalities. I am
18 here specifically today representing the Sparta Township
19 Council with a prepared statement, which you now have.

20 ASSEMBLYMAN HAWKINS: I will extend to you the
21 privilege of telling us anything that you think would
22 be contributory that we haven't heard.

23 MR. HAGEMEISTER: Fine. I would appreciate
24 that for just a second.

25 I think one of the things we have had discussion,

1 and some of this is involved in here, you have had numerous
2 discussion today about the public notification required
3 for meetings. I would raise the question, and perhaps it's
4 not so much specifically for this bill, but nonetheless
5 would be involved in it. As you know, many newspapers
6 with the energy crisis and shortage of paper curtailed
7 mail subscriptions. Specifically, I'm aware of my own
8 municipality where a substantial number of the people are
9 not year round residents and yet own property who are
10 interested in the ordinances that may or may not be adopted
11 in the community and have maintained a mail subscription
12 to Florida, California, wherever they may reside.

13 When that was curtailed--and this is the question
14 I pose to you--the legal notice that they as a citizen
15 were trying to maintain and keep abreast of in their
16 own community, they don't have that available to them now.
17 I seriously raise the question, do they have some legal
18 justification for the fact that they are not getting that
19 notice because they have endeavored to get it and are denied
20 it by action of not the governing body. I would raise that
21 question.

22 You also had a substantial number of questions
23 raised about should certain negotiations of the governing
24 body or planning board, or any of these member boards--
25 particularly I will raise one specifically for your, on

1 land purchases, and you were asking for examples. I can
2 give you specifically one that I saw, to the detriment
3 of our community, wherein a joint committee of council and
4 Board of Education in looking for new school sites and
5 then trying to arrive--or after arriving at logical parcels
6 of property had a committee to negotiate in an attempt to
7 acquire a piece of property. That obviously was done not
8 in public. Some of the discussion relative to the
9 acquisition and the need for acquisition was all done
10 publicly, but the sites were not done publicly. Just at
11 the point when the specific piece of property was about
12 to be negotiated, it was further confused by the fact that
13 the property was in joint ownership, one family with a
14 number of individuals, and it became public knowledge.
15 Some reporter picked it up and spread it all over the
16 newspapers, including the proposed purchase price that
17 had apparently been negotiated.

18 A real estate speculator hopped in, caught one
19 member who had a very small portion of it, but nonetheless
20 a portion of the property, and completely nullified the
21 municipality being able to acquire it, and it was acquired
22 by outside sources to the detriment of the municipality
23 because the subsequent parcel that had to be purchased
24 was far in excess and not as desirable a piece of property.
25 So I cite you that as one example.

1 I think about the only other comment I have,
2 just being involved for as many years as I have in it,
3 I get a little perturbed by the abuse I think all public
4 officials currently are undergoing, the low ebb of public
5 confidence that the citizenry seem to have in us. And I
6 think to a great extent, no matter what form of government
7 you have, it's only as good as the people that are involved
8 in it. Unless we get a bill such as this that you're
9 playing with--and you will find that there are modifications
10 that we request, or suggest, but basically we are in
11 accordance with it, and I think it would do a lot to help
12 restore public confidence in public officials.

13 With that the only other comment I would have,
14 because I heard a couple of things and I wasn't here to
15 hear President Davidson of the League issue the report
16 for the League. However, I understand he gave not only
17 a report to you on behalf of the League of Municipalities,
18 but also then subsequent to that gave his own personal
19 views, and I trust that those, too, will tie in here, are
20 kept separated because the League at this point--and to
21 make it clear for the record, for you--the League at this
22 point hardly endorses it in principle, is currently
23 undergoing, and as a matter of fact is in a meeting this
24 afternoon with the League Legislative Committee that is
25 further looking into it, and they will be submitting to

1 you the report of that group. Speaking on behalf of
2 myself, I trust that it will be a positive one urging
3 support of your bill.

4 ASSEMBLYMAN HAWKINS: I would suggest and request
5 that if the League of Municipalities has an interest in
6 submitting a redraft, we would look at their redraft in
7 considering our final bill.

8 MR. HAGEMEISTER: Thank you ever so much.

9 (The following is the statement of George
10 Hagemeister:

11 My name is George Hagemeister. I am a councilman
12 and former Mayor of Sparta and immediate Past President
13 of the New Jersey State League of Municipalities. I am
14 here today to present a statement on behalf of the Sparta
15 Township Council.

16 The Sparta Township Council has had an opportunity
17 to review the requirements contained within Assembly Bill
18 #A-1030, identified as the Open Public Meeting Act.
19 Generally speaking, the Sparta Township Council believes
20 that the intent of this proposed legislation is most
21 commendable, and further that there should be no severe
22 problems caused for any public agency which has maintained
23 a consistent policy of properly conducting its affairs. It
24 is the considered opinion of the Sparta Township Council
25 that the conduct of "Government Under Glass", as evoked

1 by Governor Byrne is most desirable and is in the greatest
2 accord with the principles of our democratic structure.

3 Parenthetically, it should be noted that the Sparta
4 Township Council has for many years maintained a consistent
5 policy of open and honest government, and firmly believes that
6 such practice should be followed on all levels of government.

7 At the same time, the Township Council has
8 expressed some concern with specific sections of the
9 proposed legislation, which in our considered opinion will
10 severely jeopardize the ability of public agencies to
11 efficiently and effectively discharge their responsibilities.
12 Briefly, we would wish to specifically cite those instances
13 which we feel would serve to cause hardship upon govern-
14 mental agencies, and might in all likelihood reduce the
15 effectiveness of this legislation:

- 16 1. Section 2 (lines 3 and 4, page 1) indicates that the
17 Legislature feels that it is vital for the public to
18 witness in full detail all phases of policy deliberation
19 formulation, and decision making. Generally speaking
20 this is true. However, the Township Council feels that
21 it is necessary at the same time to qualify this
22 statement since we have found by our experience that there
23 are numerous instances which require deliberation and
24 study by the governmental agency prior to discussion
25 before the public. We feel that a too literal

1 interpretation of this particular section could
2 create significant problems, and might generate a
3 flurry of complaints on the part of some members of
4 the public that they are being denied access to
5 discussion of public business.

6 2. Section 3B (line 11 et. seq., page 2) defines a "meeting"
7 as any gathering of the members of a public body for
8 the purpose of discussion or acting upon public
9 business. Again, in this instance the Township Council
10 feels that a strict interpretation of this section
11 would prohibit a governmental agency from discussing
12 in any way matters of concern without benefit of
13 public scrutiny. We feel that there are a number of
14 examples, such as a municipal zoning ordinance, salary
15 ordinance, personnel matters, etc. that must be
16 discussed by the governing body freely and without any
17 hesitation by virtue of the presence of the public or
18 the press. In each of these examples which we have
19 noted, final action or implementation must be made by
20 the governing agency at a public meeting as required
21 by law. However, the formulation of the proposed
22 legislation could very well be jeopardized if all of
23 the policy formulation was conducted in the presence
24 of the press or the public.

25 3. Section 3E (line 32, page 2) addresses itself to the

1 question of "adequate notice" which must be given for
2 all public meetings. It is the Township Council's
3 considered opinion that instances would arise on
4 a rather frequent basis in which this requirement would
5 create an undue amount of hardship upon the public
6 agency, and in fact in some instances would be
7 impossible to satisfy.

8 4. Pages 4 and 5 of the proposed legislation address
9 themselves primarily to instances in which the public
10 may be excluded from a public meeting. Briefly, these
11 matters relate to collective bargaining, purchase of
12 public property and personnel matters. However, the
13 law also requires that in those instances in which
14 the public is to be excluded, a resolution must first
15 be adopted at a public meeting stating the nature of
16 the subject to be discussed in private and providing
17 a statement that discussion of the particular matter
18 at hand in public would be prejudicial to the best
19 interests of the municipality. It is our considered
20 opinion that this latter requirement is most dangerous
21 to effective government and would severely jeopardize
22 the ability of public agencies to effectively discharge
23 their responsibilities. It is our opinion that strict
24 compliance with this requirement would in some instances
25 confuse, and perhaps create suspicion, among the

1 general public on certain issues, particularly in
 2 the case of a most complex issue or one which might
 3 feasibly cause some controversy within the community.
 4 Again, the Township Council would wish to emphasize
 5 that in these instances, final action should still be
 6 required at a public meeting of the agency and public
 7 comments should be encouraged. However, if such public
 8 comments were premature or based upon the lack of
 9 proper information, a situation could easily result
 10 in which the ultimate best interests of the community
 11 would not be best served.

12 5. Section 11 (page 6) requires that a governmental agency
 13 must mail notices of public meetings to any member
 14 of the public who so requests such notification. It
 15 is the Council's considered opinion that a significant
 16 hardship would thereby be created upon the public
 17 agency. In addition, it is our opinion that this section
 18 nearly negates the necessity for interest on the part
 19 of individual citizens in the affairs of their
 20 government. Just as a governing body has a responsibility
 21 to its citizens, the individual citizen has an equal
 22 responsibility in determining the affairs of his
 23 government, and the best means of making such a
 24 determination is through attendance at public meetings.
 25 Consequently, we feel that an equal burden must be

1 placed upon the individual members of the public as to
2 their responsibilities for participation in government.
3 In conclusion, we would again state that the basic intent of
4 the Open Public Meetings Act is most commendable and
5 desirable. However, at the same time, we would again
6 emphasize our opinion that the sections of the law which
7 we have noted above would serve to jeopardize the intent
8 of the legislation if they are strictly adhered to. We
9 believe that certain guidelines with respect to the
10 conduct of municipal officials and the conduct of public
11 meetings must be established. However, at the same time,
12 we feel that no amount of legislation will serve to
13 completely eliminate the abuse of public trust. We feel
14 that the ultimate responsibility for the election of public
15 officials who will conduct the affairs of government
16 in an open, honest and proper manner lies with the
17 individual voter and it is his responsibility to be
18 personally assured that his vote is cast for those
19 individuals whom he feels best exemplifies good government.
20 If this principle is not followed, then the work and
21 integrity of the public official and government in general
22 is irreparably damaged. The Sparta Township Council
23 wholeheartedly supports any legislation which is designed
24 to improve the image and functioning of government on any
25 level in the State of New Jersey. However, at the same

1 time we respectfully request consideration of the comments
 2 which we have raised which based upon our experience at
 3 the municipal government level we feel to be valid.
 4 Respectfully, The Sparta Township Council.)

5 ASSEMBLYMAN HAWKINS: Our next speaker is
 6 Lillian Single, President of the Maywood Taxpayers Association.

7 MS. SINGLE: Everyone has cut my speech by at
 8 least six pages.

9 Do you mind if I speak from the notes that I
 10 have scribbled?

11 ASSEMBLYMAN HAWKINS: No, mam. But do us a
 12 favor, if it's repetitive, don't.

13 MS. SINGLE: Just let me know if it's repetitive.
 14 I dozed off here and there. I'm sorry about that.

15 Really, I'm here as President of the Maywood
 16 Taxpayers Association, and most important, as a citizen,
 17 no other official capacity. I don't know, perhaps the
 18 Mayor is in the twilight zone, because my borough officials,
 19 with one or two exceptions, are very hardworking people.
 20 Nevertheless, they do suffer from what I consider the
 21 elite clique syndrome, that's what I call it. I have been
 22 in the community ten years, very active four years--and I
 23 am not politically motivated one side or the other. I
 24 became active, attending every council meeting, every
 25 planning board meeting, I'm the last one to leave, and

1 every zoning board meeting. So I'm aware on all counts,
2 appointed and elected, meetings the behavior of my public
3 officials.

4 ASSEMBLYMAN HAWKINS: Can you give us any direct
5 examples or can you give us any suggestions bearing
6 directly on the bill itself?

7 MS. SINGLE: Yes. My suggestion would be to
8 endorse it as strongly as you can.

9 One example--I can give you a thousand. I will
10 give you one which really cost me money and where I found
11 that the entire community was shut out of a public meeting
12 of public interest to the whole community, not an isolated
13 incident or one or two block concern. The Mayor called
14 what he called a caucus. He invited four citizens, in
15 addition to official members. The four citizens who
16 were invited were only on the basis of the fact that they
17 lived nearest to this particular development that was going
18 on. Nevertheless, when this happened, I must get to this,
19 I expressed interest, my entire organization expressed
20 interest. We worked actively with two other communities.
21 Our borough officials refused us access to any and all
22 information that would have helped us. We had to go to
23 the opposition, the attorney for the developer, and we
24 got the information we needed even though we were working
25 in opposition.

1 ASSEMBLYMAN HAWKINS: What was this--

2 MS. SINGLE: This was a development to go into
3 Paramus, but bordering Maywood, and it was of great
4 concern to both communities, not only on the other basis,
5 but because of flooding, a great expense involved. They
6 would not permit any information to pass their doors. I
7 had to go to the opposition to get this. There was no
8 reason for this.

9 It cost us \$4,000.00 in legal fees, alleged
10 attorneys' fees, experts that were not even aware of the
11 zoning in that area. They stumbled over their testimony.
12 Nevertheless, they got fees for expert testimony; and
13 in spite of all this, planning, zoning, and the council
14 forbid participation of any citizen except those that
15 they hand picked who happened to live on the corner and
16 were not necessarily the best educated in this.

17 I had information which was picked up by two
18 other communities. They came to my door, the borough
19 engineer, the Mayor.

20 I had a report from the soil conservation
21 division, very extensive, very authentic, at my expense.
22 I had to pay for something I should have been able to
23 receive at my borough clerk's office. This is the point.
24 I don't know that anyone here has said--they all say they
25 mistrust borough officials, but has any citizen said they

1 have experienced any active opposition, passive resistance?

2 In fact, even with presenting this assembly
3 bill, I had a fistful of these which I pressed upon everyone
4 I met, but I started off with the council. They left
5 them on their desks and actively walked away. They would
6 not read it for their own information and they would not
7 act on it, nor would they have a public hearing on it.
8 And on the grounds that these things do happen, I would
9 like you to consider supporting this for the citizens.
10 If we have people with courage in government, they don't
11 have to be afraid. And I have noticed that many
12 municipalities here today sent their borough attorneys
13 to represent them with a very defensive, frightened
14 attitude. They shouldn't be afraid, because it's really
15 only me out here. I thank you.

16 ASSEMBLYMAN HAWKINS: Thank you very kindly,
17 and I can assure you we are considering very seriously
18 the bill or else we wouldn't be here.

19 MS. SINGLE: Right. I wish some representatives
20 from Maywood were here, but--

21 ASSEMBLYMAN HAWKINS: And I appreciate your
22 comment that they sent the municipal attorneys, and I'm
23 curious to know why some of them didn't come themselves,
24 like more mayors.

25 MS. SINGLE: I'm so glad to hear you say that.

1 That's exactly what I meant.

2 ASSEMBLYMAN HAWKINS: Believe me, I appreciated
3 the position of the attorney from the Board of Freeholders,
4 who very well may not have been voicing his own opinion
5 and very well just mimicking what he was told to say.
6 It's difficult for him to defend a position he may not be
7 able to in good conscience defend.

8 MS. SINGLE: Exactly. I'm glad you brought that
9 out, because that's exactly what I meant. They are
10 fearful and they have verified my feelings that they're
11 afraid of us, and there is nothing to be afraid of. Honesty
12 and courageosness. There is nothing they can't say in
13 front of us, because most citizens do not harass their
14 officials.

15 ASSEMBLYMAN HAWKINS: I appreciate your coming.
16 The last one on the list prior to getting to the
17 sponser, who is going to sum up, is Richard Mathisen,
18 Chairman of the Project Open Government.

19 RICHARD MATHISEN: Mr. Chairman, and members of
20 the committee, and fellow citizens:

21 My name is Richard Mathisen. I'm from Elizabeth,
22 and I'm Chairman of the Coalition of Citizens Group, that
23 is called Project Open Government. And from our title, I
24 guess you probably guess that we are in favor of the bill.

25 We are operating in Elizabeth with our city

1 officials to try to open up the process of government.

2 We are not supporting any particular issue. We are
3 purely trying to get more public interest and more public
4 involvement in the governmental process.

5 Now, as I said before, we support this bill.
6 We feel it is very important at this point. It is
7 important, first of all, because it is impossible to get
8 this sort of legislation passed at the local level. It
9 can be done, but it really must be done at the state level.

10 I hear in the course of what I'm doing many of
11 the arguments, and I hope I am not being repetitious.

12 ASSEMBLYMAN HAWKINS: Well then, would you kindly
13 give us any new arguments that you haven't heard.

14 MR. MATHISEN: I have not been here all day.
15 I was unable to be here, so I will just hit on a couple
16 that I think are the most compelling.

17 First of all, I hear, for example, that
18 councilmen--well, our councilmen always meet, and this
19 goes for practically everything I know of in Union County.
20 On the nights that they don't have a meeting, they have
21 agenda fixing sessions, which is covered by this bill, and
22 the agenda fixing session is where all the decisions are
23 made, and the meeting itself, what they do is they relate,
24 they tell the citizens what they have already decided,
25 and the argument is that they need to discuss this in secret

1 they need to discuss it without a lot of interference
 2 or people understanding it so that they can get everything
 3 taken care of; and this does have weight, because I think
 4 we all know that this is very helpful at getting something
 5 accomplished. However, it leaves the citizens completely
 6 in the dark and it makes the citizens unaware of what
 7 their councilmen are doing so they don't know how to
 8 vote in an election. Like does the councilman know
 9 what he is voting on; does the freeholder know what he
 10 is voting on; does the representative advance positions;
 11 do they fight for something; are they against something;
 12 is something discussed at these meetings that's not even
 13 brought up. You have no way of knowing it was discussed
 14 and knocked down by somebody because you never see it,
 15 it never appears to the public.

16 A second argument that I hear is home rule, which
 17 is a traditional and very important term in New Jersey.

18 ASSEMBLYMAN HAWKINS: Are you in favor of home
 19 rule with reference to this bill?

20 MR. MATHISEN: I hear it said that this bill
 21 is opposed to home rule. It is forcing something on the
 22 local governments, and I frankly look at it in the opposite
 23 way. I think it's an enhancement of home rule. And the
 24 reason I think that is because home rule to me means you
 25 keep the government as close to the people as possible

1 because you want it as responsive as possible.

2 I think there is no question in my mind, from
3 looking at past history, recent history of New Jersey,
4 that there is much going on in local governments that is
5 not responsive to the people.

6 ASSEMBLYMAN HAWKINS: Where are you from, sir?

7 MR. MATHISEN: I'm from Elizabeth.

8 But, you know, you can argue about Addonizio
9 and Whelan and all these people in municipal positions
10 that were doing things that were not the will of their
11 people, in my opinion. And because of that I think it
12 is necessary to make the governments, the local governments
13 more responsive to the people, and I regard that as the
14 purpose of home rule is to have government as responsive
15 as possible, and that is why I think this is an enhancement
16 of home rule.

17 ASSEMBLYMAN HAWKINS: Thank you very much, sir.

18 Are there any other points you wanted to make?

19 MR. MATHISEN: One more point I would like to
20 make, and that is I strongly support the bill, yet it may
21 be easy to avoid.

22 I do not understand why the definition of
23 "meeting" is so restrictive that, for example, if you had
24 six Republicans and three Democrats on a council, the
25 Republicans could caucus and it's not covered, which seems

1 to me that's the whole point of what the bill is getting
2 at. I would urge that you consider a definition such
3 as any time a group or quorum or some such group gets
4 together--

5 ASSEMBLYMAN HAWKINS: That's been brought to our
6 attention. That's something that we are going to
7 consider.

8 MR. MATHISEN: And with that, I will close.
9 I thank you.

10 ASSEMBLYMAN HAWKINS: And I wish to thank you,
11 sir.

12 ASSEMBLYMAN DOYLE: What happens when two fellows
13 in a three man township committee happen to meet by
14 chance? They can't talk business?

15 MR. MATHISEN: I think they have to know whether
16 it was really by chance and you would have to--the business
17 that I do not want to see discussed is the business that
18 amounts to they have decided what they're going to do and
19 the public doesn't know what the arguments were.

20 In other words, the crucial point is that unless
21 the public sees how they are making it and knows who is
22 pushing for it, who is pushing against it, who is sitting
23 there like a dum dum and doesn't know what he is doing;
24 unless the public sees that, they don't know--well, I
25 will make one more point, over and over again: if you

1 don't like us, throw us out.

2 ASSEMBLYMAN HAWKINS: Well, how do you know you
3 don't like them?

4 MR. MATHISEN: How do you know what they're
5 doing, I ask you. That's the whole point of this.

6 ASSEMBLYMAN HAWKINS: Thank you very much,
7 sir.

8 MS. SINGLE: Will there be a grace period of
9 a certain amount of days where others in support or
10 opposition will be accepted--

11 ASSEMBLYMAN HAWKINS: It will probably be a coup
12 of weeks before we finally sit down and decide what we
13 are going to do with this bill in toto. So feel free,
14 if you know of anyone that can send in any information
15 that would help us in our deliberations to do so
16 immediately and tell them they have at least a week to
17 ten days to mail it in.

18 MS. SINGLE: May I leave this?

19 ASSEMBLYMAN HAWKINS: Yes. You can leave it with
20 our aide.

21 May we call on the very Honorable Byron Baer,
22 sponser of the bill, representative of the bill.

23 ASSEMBLYMAN BAER: Thank you for your courtesy.
24 I am glad the committee takes so long in hearing so many
25 views. I don't think there is any need for me to go into

1 a summary.

2 I do have a few notes here with some questions,
3 points that were raised that I might want to say something
4 about, not being in any particular order. I can deal
5 with that now, or if you want to question me first about
6 any specifics, I can go into that now.

7 ASSEMBLYMAN HAWKINS: Why don't you proceed and
8 go into what you think we ought to know and then maybe
9 we can respond with respect to what you say.

10 ASSEMBLYMAN BAER: The question was raised
11 about the public's right to participate in lengthy budget
12 meetings, budget hearings with departmental staff. I
13 see no reason whatsoever why the public should be excluded
14 from these proceedings. I think it helps the public to
15 have a fuller understanding of what is involved, what is
16 involved in the budget proceedings. And, in fact, the
17 various subcategories are very frequently nailed down
18 during this process. It's extremely difficult to get
19 changes at a later stage. So even though the public cannot
20 participate or be heard as such meetings, the public
21 still has the normal channels to contact their
22 representatives.

23 ASSEMBLYMAN DOYLE: On that point, Mr. Baer,
24 because I think I raised it along with Assemblyman Karcher.
25 You recognize the privileged quality and the importance of

1 collective negotiations in providing that as an exemption
2 in your bill. Let me just deposit the following example
3 and suggest to you that it is not unusual, that in
4 discussing the budget, now closed, as those meetings
5 often generally are, it might well be a township councilman
6 or a Board of Education member will say, We have 20
7 employees, I think we should provide them with \$500.00
8 raises across the board. Therefore, we ought to put
9 \$10,000.00 more. If we can get away with less than
10 \$500.00, fine. But let's put the top most amount in that
11 particular line item.

12 If that's public, what's the sense of having
13 private collective negotiations? The public is just filled
14 with sand.

15 ASSEMBLYMAN BAER: I don't see that as an
16 insuperable problem.

17 First of all, to give you an example, normally,
18 school board budgets are set before negotiations are
19 concluded.

20 ASSEMBLYMAN DOYLE: That's my very point.

21 ASSEMBLYMAN BAER: And that does not prevent
22 negotiations, the negotiation process from going forward.

23 ASSEMBLYMAN HAWKINS: Because they may not know
24 about it.

25 ASSEMBLYMAN BAER: Well, those budgets are made

1 public. First of all, the proposed budget from the
 2 Board of Education, and later, as it goes to the city,
 3 are made public fairly promptly, according to the statutory
 4 schedule. And in many cases, if not all cases, I am not
 5 sure, negotiations have not concluded by that time. The
 6 school boards are, nonetheless, able to operate within
 7 that framework. There are various devices that are used
 8 to affect that. I really think that this does not pose
 9 an insuperable problem, and I think that just because a
 10 municipality has certain monies or has expressed a tentative
 11 willingness to raise certain monies doesn't mean they have
 12 to negotiate it away. Like I say, we know from
 13 experience just because the budget does not include
 14 certain monies, it does not by any means preclude the
 15 practice that those monies end up in the negotiations and
 16 the greater amounts are settled on.

17 ASSEMBLYMAN DOYLE: But the problem is that you
 18 can't change the line items in a municipal budget until
 19 the last two months. Your budget has to be set by
 20 statute by March 31st. If your bargaining is on a calendar
 21 basis, or almost any basis, that means that you will have
 22 set your budget before you would have concluded your
 23 negotiations. If you have those budget meetings public,
 24 then the collective bargaining agent for the municipal
 25 employees knows what the top of the scale is you're

1 prepared to offer. Knowing that, having collective
2 bargaining negotiations in private matters little because
3 the employees know how far the public will go and they
4 might as well ask the top amount at the beginning.

5 When you say it's not insuperable, do you
6 mean it's not insuperable for the municipalities to put
7 up with the situation, or it is not insuperable to amend
8 your proposed legislation so as to encounter a real
9 problem?

10 ASSEMBLYMAN BAER: Well, if there is a real
11 problem--and I don't consider myself an expert on the
12 detailed procedures involved in budget making--but if there
13 is a conflict, it seems to me clearly that this conflict
14 should not cause the public to be excluded from these
15 vital budget making procedures, because the budget is
16 such an important part of public policy. It seems to me
17 that if there is such a conflict, then scheduling should
18 be changed so that negotiations can occur at an earlier
19 date and provisions should be made for some modifications
20 such as that to avoid this headon conflict.

21 ASSEMBLYMAN DOYLE: What about providing that
22 every other part of the budget is open, but those dealing
23 with salaried provisions for municipal employees or
24 teacher employees, the 200 accounts of the Board of Ed
25 budget would be able to be closed, would that be acceptab

1 ASSEMBLYMAN BAER: That would certainly be
2 far better than having all of the budgetary matters closed.
3 If that were the only way that this could be resolved,
4 I certainly would find it acceptable. I'm not convinced
5 from my own knowledge at this point that it is. I would
6 rather reserve judgement on that.

7 ASSEMBLYMAN KARCHER: Might I suggest one thing.
8 In the normal course, Assemblyman Baer, most contracts
9 are not completed or not settled until after budgets have
10 been introduced. There is a very simple reason for that.
11 No business agent, no negotiating team in their right
12 mind could possibly expose themselves to settling a contract
13 and then have the embarrassment of going back to their
14 members with a budget that was introduced with two or
15 three more per cent in their pocketbooks. They'd be
16 unanimously shouted out of office. That's why nobody
17 settles a contract until the budget is introduced to see
18 what flexibility they have.

19 ASSEMBLYMAN BAER: I have heard two sides on
20 that, because I've heard that a lot of, for instance,
21 teachers' groups are dissatisfied and some of them claim
22 that they're locked in before their negotiations have a
23 chance to be concluded.

24 ASSEMBLYMAN KARCHER: They are never locked in
25 because of the possibility of emergency appropriation.

1 They are never locked in. That's what heads off five
2 dozen strikes a year, the fact that emergency appropriations
3 are kicked in on top of the budget.

4 ASSEMBLYMAN BAER: And, likewise, that
5 emergency appropriation potential may provide a way of
6 avoiding this conflict that we are talking about here
7 between legitimate goals.

8 ASSEMBLYMAN KARCHER: I really think that's
9 ancillary.

10 My question is this: Would this also apply
11 to the state budgetary proceedings?

12 ASSEMBLYMAN BAER: This bill does not involve
13 the Governor's office and his various offices. It's
14 intended to apply to legislative bodies.

15 I would like to leap into the question that
16 was raised earlier about that. The question was raised,
17 since the Governor sometimes performs duties related to
18 legislation, either through executive order or revealing
19 legislation, why should the public not be involved in
20 that. But it seems to me that there is an essential
21 difference between the Governor or any of his department
22 heads who may be meeting with persons who have a function
23 of advising them, but have no collective authority as
24 a board and public bodies which do have authority as a
25 board to make decisions collectively and where the decision

1 can only be made collectively under the procedure of law.
2 And it's the latter that this bill seeks to cover; not
3 to intrude between every executive officer and any adviser
4 that he might have.

5 ASSEMBLYMAN KARCHER: In actuality, no
6 municipality creates its own budget. It's always done
7 by the auditor and the treasurer. The same way for the
8 Governor and the legislature, they do not create a
9 budget.

10 In fact, to get to one question at a time.
11 Actually, the submission of a budget, the preparation of
12 a budget is not a legislative function. They have a
13 review function. It's an executive function to prepare
14 the budget.

15 ASSEMBLYMAN BAER: I am not proposing that that
16 function the public be invited to sit in on. I am
17 proposing that the legislative review function conducted
18 by municipal or county bodies or authorities involve
19 the public.

20 ASSEMBLYMAN KARCHER: Up until such time as the
21 Mayor, the chief executive, made his recommendations to the
22 council, and then when it became shifted from an executive
23 function to a legislative function that's when the public
24 would have their input?

25 ASSEMBLYMAN BAER: That's the intent here. And I

1 think that's proper inasmuch as the persons who play
2 legislative roles are supposed to be accountable to the
3 public directly and are not accountable as an administrator
4 might be to an elected official or some superior, as
5 opposed to the public.

6 ASSEMBLYMAN KARCHER: On that basis, then, would
7 it not be a fact that the public input into the formulation
8 of a budget would be totally foreclosed, because the
9 formulation of that budget is an executive function?

10 ASSEMBLYMAN BAER: No, I don't think so, because
11 in fact experience shows that although budget officers
12 may prepare budgets, legislative bodies frequently do
13 make modifications of them. And as a matter of fact,
14 I think it's rare that there not be some modification,
15 even though the overall skeletal structure remains to a
16 substantial degree. But these modifications often touch
17 very important matters of public policy and public concern
18 with the public input is vital.

19 ASSEMBLYMAN KARCHER: I have been in a budget
20 making process for maybe too many years, but I have
21 difficulty in finding out where the line would be drawn
22 where somebody would be doing something legal or illegal.
23 Every councilman in a municipality has a dual role. He
24 serves as a legislative officer, elected official. But
25 he also serves in the normal course of affairs as an

1 executive officer, as chairman of a department, under
2 a commission form of government. As the chairman of
3 a department, he has one function, he would be obviously
4 meeting with the borough treasurer, the borough auditor,
5 and superintendent of that department in an executive
6 capacity now in formulating his budget. At the same time
7 he is a councilman.

8 Now, that obviously would be an executive
9 function when he is talking to a superintendent of the
0 public works. He is a commissioner of public works.
1 He is meeting with the superintendent of public works.
2 He has the treasurer and the borough auditor present.
3 That's an executive function. At the same time the other
4 councilmen come in because the auditor charges 150 bucks
5 a day. They are not going to have him down eight days
6 running and meeting with every department. I have never
7 seen an auditor show up by himself. He brings another
8 guy, at \$85.00 a day. The councilmen sit together in the
9 same room, and they are serving one at a time in rotation
0 as executive, wearing executive hats in the department,
1 and their superintendent of roads comes in, superintendent
2 of water comes in, superintendent of parks comes in, and
3 they're all gathered there together, the councilmen in the
4 same room, going through the same kind of executive
5 process. But in the meantime, there is a little bit of

1 talking back and forth, you can't have that for the roads,
2 I need that for the parks, we are going to fix the roads,
3 and that should go into my budget.

4 Do they become legislative and does the public
5 have to come in to that?

6 ASSEMBLYMAN BAER: Let's at least continue
7 with this line of questioning, and I understand your
8 question. I don't see any problem in making such a
9 distinction. I guess with any legislation if you construct
10 something complicated enough, you can maybe find a borderli
11 area. But I didn't find that this is a particularly
12 serious one.

13 The bill refers to meetings of public body where
14 there is intent. The term intent is used in one of the
15 definitions. I think it covers what you're talking about,
16 where people may just happen to find themselves together
17 functioning in tandem, but not functioning as part of a
18 group.

19 If, in fact, they are functioning as part of a
20 group, in the sense that only the council collectively
21 can make decisions on the budget, and they are really
22 reviewing it and seeing to what degree they are all agreed
23 on it section by section, then it would clearly come within
24 the purview of this Act. But just because people by chance
25 find themselves together in a situation like this, or as a

1 previous questioner brought out, in a social situation,
2 where three or more people might be together, I think we
3 all know in public life we find ourselves together at
4 dinners, at funerals, things like that. Sometimes we end
5 up discussing matters of interest. But nobody could
6 construe that such a meeting was held for the intent of
7 deciding or concluding upon any type of public business.
8 And I think that we are covered--

9 ASSEMBLYMAN KARCHER: That's the problem with the
10 definition, public business.

11 My point is this: that every councilman and
12 every freeholder in the State of New Jersey functions in
13 two roles with regard to the "public business." They
14 function in an executive role and administrative role, and
15 they function in a legislative role. Maybe you have no
16 problem making that dichotomy in their function, but I
17 am sure the average councilman in the 567 towns is going
18 to have one hell of a time figuring out whether he is
19 functioning at the moment in an executive capacity or
20 potentially in a legislative capacity.

21 ASSEMBLYMAN BAER: Well, my testimony is, anyway,
22 without wanting to be debated, I don't think it would be
23 exceptionally difficult for him--

24 ASSEMBLYMAN HAWKINS: It would be better if we
25 defined which is which.

1 ASSEMBLYMAN BAER: That's right. My belief is
2 it's defined adequately. But if not, I have no doubt
3 that it can be adequately defined and that this should
4 pose no greater problem in terms of discretion of public
5 officials than many other statutory requirements which
6 public officials must responsively meet, some of which
7 even involve jeopardy with the law.

8 ASSEMBLYMAN HAWKINS: Mr. Baer, feel free to
9 proceed, if you will.

10 ASSEMBLYMAN DOYLE: One point you raise, and I'm
11 sure the assemblymen will want to touch upon it, is the
12 chance meetings. We have all heard about it: you know,
13 the two fellows who run into each other at the barber
14 shop. You said if that meeting at the barber shop wasn't
15 called for the purpose of discussing public business,
16 then in fact it's not covered.

17 Do I understand that to be your impression
18 of what you sponsor?

19 ASSEMBLYMAN BAER: That's correct. Looking
20 for the definition--

21 ASSEMBLYMAN DOYLE: "Meeting" is on page 2, the
22 second number 11.

23 ASSEMBLYMAN BAER: I think the definition of
24 "meeting" adequately covers that.

25 ASSEMBLYMAN DOYLE: When that says, "held with

1 the intent," you mean called with the intent, then; is
2 that correct? Do I understand you, Assemblyman Baer?

3 ASSEMBLYMAN BAER: Yes. At least momentarily,
4 as you raise the question, that would seem to me also true.

5 ASSEMBLYMAN DOYLE: When you say a meeting
6 attended by all members of a public body, and then just
7 prior "public body" is defined, if you have a five man
8 township committee and of that five men two members are
9 on the road, sir, the public works subcommittee, is that
10 a public body, that two man subcommittee of the township
11 committee?

12 These questions, while seemingly minute, I think
13 are some of the major questions that were raised to me
14 and in my own mind concerning the applicability of the
15 public body that concerns them. And to all of those
16 people who say we like the intent, but not the particular
17 wording, it might well be that when they look at the wording
18 or understand its true meaning they might not have as much
19 problem. And I ask this question with that in mind.

20 ASSEMBLYMAN BAER: Well, it would be my belief
21 that unless that two man body had legislative authority
22 that they would not be covered.

23 By the way, the suggestion of Common Cause
24 so far as using quorum in the definition--was it "public
25 body" or "meeting"? I forget which. But that suggestion

1 I think is a good one and might help to avoid some of the
2 hypothetical problems that we are discussing. I think
3 there are very few bodies where there are two persons that
4 actually have legislative authority. But if such exists,
5 where there are three commissioners or something and two
6 show up, then I think it would likewise be stated.

7 ASSEMBLYMAN HAWKINS: Are you stating that
8 anybody who doesn't have legislative authority should not
9 be covered by the Act? Is that what you said,
10 Assemblyman Baer?

11 To get to the point, sir, the Board of Chosen
12 Freeholders, do they have legislative authority?

13 ASSEMBLYMAN BAER: I believe they have both
14 legislative and administrative authority.

15 ASSEMBLYMAN HAWKINS: What legislative authority
16 do they have?

17 ASSEMBLYMAN BAER: They issue resolutions, which
18 have the impact of what in municipalities are considered
19 ordinances.

20 ASSEMBLYMAN HAWKINS: Resolutions affecting
21 municipalities?

22 ASSEMBLYMAN BAER: Well, I'm saying that although
23 they're called resolutions, they have the same effect,
24 generally, as what we consider ordinances on the municipal
25 level, and that I consider as a legislative function.

1 ASSEMBLYMAN HAWKINS: Isn't it more administrative?

2 ASSEMBLYMAN BAER: No. I believe they have
3 both administrative and legislative functions, and I think
4 this is generally accepted.

5 ASSEMBLYMAN HAWKINS: How would you distinguish,
6 sir, in their function, the Board of Chosen Freeholders
7 when they're deliberating in an administrative capacity
8 and in a legislative capacity to make a determination
9 whether their actions should come within or without the
10 Act?

11 ASSEMBLYMAN BAER: Well, it is my understanding
12 that their legislative capacity is one that functions
13 collectively. But rather than give you an answer here,
14 when I am not certain, I would rather get you something
15 on this or get additional information on it.

16 ASSEMBLYMAN HAWKINS: I don't wish to interrupt
17 you.

18 ASSEMBLYMAN BAER: What this bill intends to
19 cover is the collective actions of such bodies based on
20 the authority that they have collectively. And when they
21 meet together to pass on public business, it is not the
22 intent where a given individual who is a member of a
23 body given basically an administrative responsibility to
24 look into things to cover that.

25 ASSEMBLYMAN DOYLE: When you give back the

1 committee your response, please deal with the situation
2 about the quorum, and particularly the three man governing
3 body, because the numbers are so small and they are in
4 such little towns that chance occurrences are frequent.
5 And though they might be in small towns, this state,
6 with 567 municipalities, has a number of small towns with
7 small governing bodies. So that when Joe, the councilman,
8 runs into Pete, the councilman, in a three man governing
9 body and Joe says, Did you see where the junkyard applicat
10 had come up and there had been no prior application. And
11 Pete says, Yes, I have been by the clerk's office and I
12 saw it. And Joe says, I'm for it. And Pete says, Well,
13 why. And Joe tells him why. And Pete says, Me, too. And
14 it's agreed they will both vote yes.

15 Have they done something illegal when they
16 happen to run into each other at the barber shop and they
17 didn't think they were going to see each other, much less
18 discuss that which came up? Or should they immediately
19 walk away and break up the conversation?

20 ASSEMBLYMAN BAER: I see no problem with this
21 myself. I don't think the key has to do with the size
22 of the body, although that may to some degree affect how
23 chancey their meetings are. But I think we have to deal
24 with chance meetings, in any case. And there are social
25 events that bring public officials together, anyway, to

1 a degree that would defy otherwise the law of probability.
2 And I think if such a thing were challenged, the courts
3 would have no difficulty in determining intent, as they
4 do in lots of other matters where it's critical.

5 ASSEMBLYMAN DOYLE: That's the problem with the
6 Florida Sunshine Law. I don't want to leave things to the
7 court. We are here to write a law, not to say the courts
8 will take care of the problems that we cause for them.

9 ASSEMBLYMAN BAER: This is quite different from
10 the Sunshine Law. This does not cover collections of
11 officials of two or more people of less than the whole
12 body or where less than the whole body were invited.

13 To be more specific, I'm aware that the Florida
14 Sunshine Law has been held by some to cover phone conversations
15 between two people on the phone and a conversation between
16 two people in a car. This does not attempt to go that
17 far. In my opinion, that is a mistake. It is not
18 practical. It invites contempt for any type of legislation
19 that we would try to pass, just as prohibition does.
20 This bill is intended to cover not public officials who
21 may happen to get together, but gatherings where all
22 public officials of a body are called together for the
23 intent of discussing or acting upon public business.
24 And if they aren't all invited, or if they come together
25 for a funeral and not for discussing public business, it's

1 not covered.

2 Now, I think that, in my opinion, is as clearly
3 as we can define it. I think no matter how well we define
4 it, there is nothing to prevent--somebody raised the
5 question of harassment, of somebody challenging, bringing
6 something into court. It's not that I'm looking forward
7 to a heavy court involvement, but ultimately if somebody
8 wants to challenge something, it has to be settled in
9 court.

10 I don't think that this law, or proposed law,
11 is any more subject to abusive harassment than lots of
12 others that are on the books, whereby if somebody wanted
13 to very arbitrarily and unjustly and outrageously charge
14 officials with doing things, and having no evidence whatsoever
15 of what they had been doing, everybody has the right to
16 go to court, and they would here. But I don't think there
17 is any special deficiency in this regard.

18 ASSEMBLYMAN HAWKINS: Assemblyman Baer, we
19 are going to end promptly at 4:15, so I am requesting a
20 view, if you have anything you want for the record, please
21 enter it on the record. As I have stated before, we are
22 definitely going to be getting together with you to go
23 over, with a fine tooth comb, every aspect of this bill,
24 and that will be done in our open meetings as we have them.

25 ASSEMBLYMAN BAER: That being the case, I see no

1 need to go into specifics now.

2 I want to thank the committee again--

3 ASSEMBLYMAN HAWKINS: Does the committee have
4 any questions within the next five minutes?

5 ASSEMBLYMAN BAER: Let me at least complete my
6 thanks to the committee, because I recognize their
7 very sincere interest in this, the priority they have
8 given it in terms of scheduling, and the chairman, and
9 that this is recognized as a matter of considerable
10 public importance, and I want to thank you for your
11 patience and your courtesies.

12 ASSEMBLYMAN HAWKINS: Assemblyman Baer, on behalf
13 of the committee, we wish to thank you for your interest
14 and dedication to the public to introduce such a bill.
15 And we will, as I stated, be having you in to our committee
16 meetings.

17 For the record, I'm going to thank the members
18 of the committee for coming to hear the debate on the bill,
19 and I am very proud of the Judiciary Committee. I have
20 sat on other committees during the past two years and it's
21 been my experience that the legislators of past have not
22 been able to meet up to the expectations of the qualifications
23 of the members on my committee, and I am very proud of the
24 members of the Judiciary Committee. I happen to think we
25 have the most qualified committee in the assembly. Now,

1 I'm sure Assemblyman Baer might debate that with his
2 committee. But I'm very proud of our committee.

3 I want to thank everybody, for coming out. And
4 I repeat, if there is any additional testimony to be
5 submitted, it may be done by letter to Pat Donath,
6 Legislative Aide, Legislative Services, State House,
7 in Trenton. Thank you very, very much.

8 (The hearing was concluded.)

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C E R T I F I C A T I O N

I, EDWIN SILVER, a Certified Shorthand Reporter and Notary Public of New Jersey, do hereby certify the foregoing to be a true and accurate transcript of my original stenographic notes taken at the time and place hereinbefore set forth.


EDWIN SILVER, C.S.R.

April 23, 1974

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BOROUGH OF NEW PROVIDENCE
OFFICE OF THE MAYOR

March 13, 1974

Mr. Chairman
Ladies and Gentlemen:

My name is Edward M. Bien, Mayor of the Borough of New Providence. I regret I cannot personally appear before the Committee to present my views and am offering this statement for the record.

I am unalterably opposed to Assembly Bill 1030. The burden of open meetings should not be placed on municipalities because, in my opinion municipalities, as a whole, do conduct their business in open. The language of the bill is definitely inadequate and in its present form can only lead to numerous law suits and delays in the normal operations of municipal business. One can appreciate the intent of the bill but in my opinion the answer does not lie in legislation. The answer lies with the electorate. They can and will make their decision at the polls if their governing bodies are operating in "secret".

In reading the language, the definition of public business certainly leaves something to be desired. If the only criterion is section 13, which states "This act shall be liberally construed in order to accomplish its purpose and the public policy of this State as set forth in section 2", I shudder to think who will ultimately make a final determination. I also question who determines what is confidential - the citizen, the court?

Section 6 (5) in its entirety is wholly unacceptable and in particular, subsections 5 (a) and (b). The cost of the government is going to increase and the courts will have a backlog of cases causing a breakdown in municipal operations. I may be over reacting but I am sure there will be many test cases.

In section 7 (b), what guarantee does the elected official

March 13, 1974

Page 2

have that governmental process will not be stymied? Doesn't the citizen have recourse to the courts currently when he feels aggrieved? Will not this bill lead to partisan politics being played in all matters? How can the Legislature tell the Courts that actions taken by a governing body are void based on the language of this bill?

Section 9 is an insult to all elected officials and I personally resent the term "disorderly person" in the language of this bill. In my opinion, this bill appears to have been written by people who have never held elected office and may not fully appreciate the mechanics of governmental operation.

For the record, it should be noted the Borough of New Providence does hold open meetings, both public and conference. Admittedly, there are times when "executive sessions" must be held but I am proud of our record and the many meetings we hold in an attempt to let the people know what is happening.

The thought occurs to me that before the Assembly adopts this bill, they should apply to themselves the language incorporated therein, to see if what is being proposed is workable. I sincerely believe this bill as presently defined leaves much to be desired and should not be enacted.

Edward M. Bien

Edward M. Bien, Mayor
Borough of New Providence

EMB:jd



OFFICE OF THE MAYOR

CITY OF TRENTON, NEW JERSEY 08608

ARTHUR J. HOLLAND
MAYOR

April 9, 1974

The Hon. Eldridge Hawkins
586 Central Avenue
East Orange, New Jersey 07018

Dear Assemblyman Hawkins:

I am a strong advocate of the concept of open government at all levels. Public participation in the workings of government is essential to the health of democracy. Recognizing this, I have maintained an "open door" policy during my years as a public official.

There is no such thing as a closed meeting in the Mayor's Office. The door is always open - literally. Anyone may walk into the Mayor's Office at any time. There are of course times when in the public interest the press is asked to keep temporarily "off the record" certain matters such as real estate which is under consideration for acquisition by the City.

The employees in the office do not ask who is calling so that anyone may feel free to have direct access to the Mayor by telephone. My home telephone is listed in the telephone directory. One night a month is set aside for citizens who work out of town or otherwise find it difficult to come to City Hall during the day. I also take City Hall to the people in each of the four wards by having Town Meetings. I am always available to and responsive to newspaper, radio and TV reporters.

However, the present attempt by the Legislature to guarantee a more open system of government in New Jersey,

as represented by Assembly Bill 1030, the Open Public Meeting Act, contains several major weaknesses which I feel must be corrected if it is to represent a reasonable means of achieving its stated goals.

1. Threatens the ability of government to function.

The definitions of "public body," "meeting," "public business" and "act upon and discuss" are too broad and therefore threaten the ability of government to function. Under the present definitions the essential day-to-day interchanges among government officials would be subjected to the stringent notification requirements of the bill. No distinction is made between meetings at which policy decisions are made and those which can be characterized as relating to the administration of policy decisions.

This measure provides that adequate public notice be given for all meetings between two or more governmental officials to act upon or discuss public business. This would seem to include such meetings as: discussions between a mayor and a department director concerning the operations of the department; discussions between an electrical inspector and a building inspector concerning problems within a particular building; and all other such meetings between government employees at all levels. This would tie the hands of government by restricting the essential exchanges necessary to conduct government affairs.

2. Notification burden.

Aside from the difficulty this requirement presents in arranging for such necessary day-to-day interchanges among officials, the notice and record keeping requirements contained in A-1030 would be a major additional burden on a municipality. The present staff of many municipal clerks' offices in the State would be insufficient to fulfill the requirements of this measure. In addition, it would

seem that legal notices of all meetings would be necessary in order to comply with the requirements of A-1030. If legal notices were not required, a public body, a newspaper or both in concert could determine which issues would receive publicity. The cost of such notices to many municipalities would be monumental, given the number of meetings for which notice must be given. If such notices had been required in 1973, approximately 100 meetings of Trenton City Council and 50 meetings of all department directors would have had to be advertised. These totals do not reflect any meetings of smaller groups of department directors or meetings of special commissions or task forces which are essential to government.

3. All government action would be brought into question.

Section 7.a provides that "Any action taken by a public body at a meeting which does not conform with the provisions of this act shall be void." This brings potentially into question all governmental contracts and laws. Any party, either governmental or private, wishing to extricate itself from a contractual agreement could pursue this course of action. The resulting impact upon government's ability to enter into contractual arrangements would be seriously imperiled. Given the extensive range of the provisions of A-1030, numerous possible sources of challenge are available along the path to completion of any governmental action.

4. Inconsistencies in the treatment of executives at various levels of government.

The exclusion of the Office of the Governor, representing the executive branch of State government, from the provisions of this act in Section 3.a line 7 does not coincide with the inclusion of the representative of the executive branch of municipal government. Any arguments which support the exclusion of the State's chief executive would in all likelihood apply to the municipal chief executive. Likewise, arguments for the inclusion of the municipal chief executive would

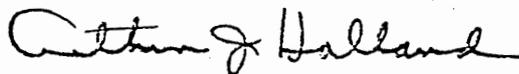
also seem applicable to the State chief executive. The burden of proof is upon the backers of this measure to justify what seems to be a discriminatory distinction.

5. Open-ended exclusion from the notification requirement.

Section 4.2 (4) (b) provides a seemingly open-ended exclusion from the notification provisions of this act. If three criteria are fulfilled, it provides that a public body may hold a meeting without providing adequate notice if "although the public body could have foreseen the need for such a meeting at a time when adequate notice could have been provided, it nevertheless failed to do so." It would seem self-defeating to permit such a provision to remain if this bill is in any way to achieve its objectives. Any meeting concerning a particularly controversial topic could be declared to fall within the provisions of this section and escape the requirement of public notice and attendance. Thus, one might anticipate that all noncontroversial items would be openly discussed after adequate public notice, while controversial ones would remain as subjects of secret meetings. The inclusion of this section seriously undermines the potential impact of this act.

It is my hope that these suggestions will be given serious consideration before action is taken on this measure which is so important to the public interest.

Sincerely yours,



AJH:vo

RESOLUTION OPPOSING THE ADOPTION
OF AND AUTHORIZING THE TOWNSHIP
ATTORNEY TO OPPOSE THE "OPEN PUBLIC
MEETINGS ACT" AS PRESENTLY WRITTEN.

WHEREAS, there has been introduced a bill in the General Assembly of the State of New Jersey, "Assembly No. 1030, entitled the "Open Public Meetings Act;" and,

WHEREAS, under the provisions of this Act, the governing body of any municipality, except under the most limited circumstances, could not hold executive conferences and caucuses to discuss and plan the necessary business of the municipality; and,

WHEREAS, the Township Committee recognizes the necessity of guarding against questionable practices of convening "emergency meetings" to conduct the public business without adequate public notice; and,

WHEREAS, the Township Committee also recognizes that the official business of the Township may only take place at public meetings, in a public place with discussion and public notice as time and the circumstances must permit, with the ultimate right of the citizenry to seek redress for abuses through the electoral and judicial processes; and

WHEREAS, the Township Committee also recognizes that the needs and demands of harmonizing competing interests

in the community requires the opportunity for informal discussion and caucus and executive conferences to discuss problems and solutions by responsible elected representatives of the citizenry to seek rational and orderly means to achieve community goals;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Dover, County of Ocean, State of New Jersey, as follows:

1. It opposes the adoption of the "Open Public Meetings Act," as presently drafted, and urges the adoption of amendments consistent with the tenor of this resolution.
2. It authorizes the Township Attorney to appear at a scheduled public hearing on Thursday, March 14, 1974, before the Assembly Judiciary Committee to discuss Assembly No. 1030, and such further hearings, conferences and meetings as prove necessary to oppose this bill as presently drafted.
3. Certified copies of this resolution shall be provided by the Township Clerk to each of the following:
 - a. Assembly Judiciary Committee
 - b. Sen. John Russo
 - c. Assemblyman
 - d. Assemblyman
 - e. Township Attorney

Raymond J. Ryan
 Approved as to form
 Township Attorney

MANUEL HIRSHBLOND, CLERK of the TOWNSHIP of DOVER, IN THE COUNTY OF OCEAN, HEREBY CERTIFY THAT THE ABOVE IS A TRUE COPY OF A RESOLUTION ADOPTED BY THE TOWNSHIP COMMITTEE ON THE

- 2 -

12th DAY OF March 1974
Manuel Hirshblond
 MANUEL HIRSHBLOND, TOWNSHIP CLERK

MAYWOOD TAXPAYERS ASSOCIATION

MAYWOOD, NEW JERSEY 07607

March 12, 1974

New Jersey Legislature
Trenton, New Jersey

Re: Assembly Bill 1030

The Open Public Meetings Act

Gentlemen:

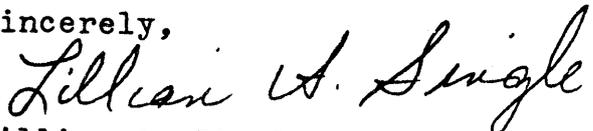
The Maywood Taxpayer's Association wishes to officially register support for Assemblyman Byron Baer's proposed legislation, #1030, THE OPEN PUBLIC MEETINGS ACT.

As citizens, taxpayers and voters, we urge each of you to fully endorse this legislation! There can be no more important issue this year than CITIZEN'S RIGHTS. This bill will, with your help protect us from those who dare to disenfranchise the public, the average citizen, from observing, investigating and participating more fully in government business. Government business is OUR BUSINESS.

We sincerely urge you to vote affirmatively and take care not to dilute the content of the Open Public Meetings Act, by deletions and (amendments).

This bill must remain intact if it is to be of any value to the taxpayer-voters.

Sincerely,



Lillian A. Single, President

MAYWOOD TAXPAYERS ASSOCIATION

March 14, 1974

The speakers in favor of this bill, A-1030, Mary Alice Hancock and Lois Paterson, representing the Alert Parents for Good Schools organization of Scotch Plains-Fanwood, have had to leave in order to return home to their school children. However, please read their statement, into the record of this public hearing:

In our opinion, as far as the Scotch Plains-Fanwood school district is concerned, this bill is desperately needed. Practically all of the points covered by the bill could be applied to actions of our Board of Education.

The most outstanding example of our need would be a tenure case (that of Assistant Superintendent for Business) where the school board called a special emergency meeting with members signing a waiver of the 24 hour notice requirement (of their own policies) and then acted on business other than that for which the meeting was called. They proceeded to abolish three other school administrative posts. Due to public outcry and attendance of about 500 citizens at their next regular public meeting, they rescinded these actions.

We favor the idea of making provision for public input before decisions are made. And unless the public can know and understand the background of issues, this is impossible. At present, our school board allows public discussion only after the meeting is adjourned and all votes are finished. Our organization has repeatedly requested a change in meeting format to allow the public to speak to agenda items before the vote is taken, but our requests have been repeatedly denied.

We also desperately need a regular schedule to be published for all meetings at the beginning of the year. We like the requirement that the press, at least, be notified of special emergency meetings, even at the very last minute.

We agree with the arguments made here today that too often decisions have already been made in closed sessions and the result is public apathy or cynicism. Even requirements for public hearings are often a charade because the decisions are already made.

Another area that interests us is the definition of the control of public record, i.e. minutes of the public meetings, and their availability to the public within a reasonable time after the meeting. Our board, for example, have denied citizens' requests for access to the tape recordings which are made at regular public board meetings. They maintain that the tapes are made only for the use of the secretary in recording the minutes, and are then destroyed.

For all these reasons, and more, we urge prompt adoption of bill A-1030.

/s/ L. M. Paterson
/s/ Mary Alice Hancock

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