

# ROCK THE CAPITAL

January 23, 2018

## Rock the Capital Sues the Legislative Audit Advisory Commission for Violating the Sunshine Act

### **Analysis: Pennsylvania’s Sunshine Act (Open Meetings’ Law) The Legislative Audit Advisory Commission**

The Legislative Audit Advisory Commission (“LAAC” and “the Commission”) has apparently violated Pennsylvania’s Sunshine Law. The Pennsylvania Sunshine Act, 65 Pa. C.S. §§ 701 – 716, requires agencies to deliberate and take official action on agency business in an open and public meeting. It requires that meetings have prior notice and that the public can attend, participate and comment before an agency takes official action.

The law defines a meeting as “any prearranged gathering of an agency which is attended or participated in by a quorum of the members of an agency held for the purpose of deliberating agency business or taking official action.” The Legislative Audit Advisory Commission took action because it *voted* on a matter. LAAC may take the position that action was taken during “executive session.” However, executive session is only appropriate under Section 708 under the following circumstances:

1. Discussing personnel matters;
2. Holding an information, strategy and negotiation session related to the negotiation of a collective bargaining agreement;
3. Considering the purchase or lease of real property;
4. Consulting with an attorney about active or pending litigation;
5. Discussing agency business which, if conducted in public, would violate a lawful privilege or lead to the disclosure of information or confidentiality protected by law;
6. Discussing certain academic matters (this reason is specifically limited to certain institutions of higher education); and
7. Discussing certain public safety issues if disclosure of the information discussed would be reasonably likely to jeopardize or threaten public safety or preparedness or public protection.

LAAC's action does not appear to fall within any of the identified exceptions. Moreover, the specific reason for an Executive Session must be announced in the public meeting either before or directly after the Executive Session. (See, *Reading Eagle Co. v. Council of City of Reading*, 627 A.2d 305 (Pa. Cmwlth. 1993).

## History

On December 27, 2018, the Legislature Audit Advisory Commission announced, prior to its publicly convened meeting, "Today we accepted the final audit of the General Assembly's expenditures from the last fiscal year which ended June 30, 2018, so these numbers are already months old and out-of-date, but show that we followed the generally accepted policies." (Enclosure)

Clearly and unambiguously, the Legislative Audit Advisory Commission subverted the spirit and letter of the Sunshine Act:

1) A meeting or meetings of the LAAC may have occurred without public participation or public record keeping, **prior to the announcement and approval** of the Audit, and before the Commission took “official action.”

2) A meeting or meetings may have occurred with the Auditor that resulted in an “official action,” **prior** to the final audit, without public participation or public record keeping.

3) The public was **excluded** from offering comment, participating, reviewing data or testifying at the meeting convened by the LAAC on December 27, 2018.

4) Rock the Capital was allowed to submit Comments in advance of the December 27, 2018 meeting, but was **not permitted participate in the meeting or review the Audit, Auditor’s Opinion or any relevant data until after the Audit was approved.**

5) The public was **denied access** to the Auditor’s notes and reports prior to the meeting, and had to rely on post-meeting electronic filings for data after the Committee had adjourned.

6) The Commission **refused** to solicit an Request for Proposal (“ RFP”) for an “independent audit,” and unilaterally - and without public input or vetting - took the “official action” of selecting Boyer and Ritter LLC.

## Conclusion

The Open Meetings Law requires that meetings have prior notice, and the public can attend, participate and comment before an agency takes action.

The implication from the press release is that the decision to approve the Audit was made prior to a public vote. The only way to publish the outcome of a vote - before it is taken - is to illegally meet and vote behind closed doors.

Clearly, the Legislative Audit Advisory Commission violated the Sunshine Law on December 27, 2018.

## Remedy for Violation of the PA Sunshine Law

Section 710.1(c) of the Sunshine Act permits anyone attending a public meeting to object to a perceived violation at any time during the meeting. In addition, for state agencies, a member of the public can file a complaint with Commonwealth Court. Any complaint must be filed within 30 days of the public meeting in which the alleged infraction occurred. If the alleged infraction occurred during a closed meeting, the complaint must be filed within 30 days of the discovery of the infraction, as long as it is no longer than one year from when the meeting was held. The person alleging the infraction bears the burden of proof. See, *Smith v. Township of Richmond*, 623 Pa. 209, 223 (Pa. 2013).

## Penalties for Violating the PA Sunshine Law

In addition to being assessed attorney's fees, any member of an agency who is found to have violated the act can face criminal charges and be subject to fines of \$100 to \$1,000 for the first offense and \$500 to \$2,000 for the second offense.

## Petitioner's Requests for Relief

- 1) Reconvene the Audit Commission, and allow for public comment. The LAAC acknowledged, "...these numbers are already months old and out-of-date, but show that we followed the generally accepted policies."
- 2) Allow for public comment at all future meetings of the Legislative Audit Advisory Commission which should be held within sixty ("60") days of the end of the Fiscal Year on June 30.
- 3) Compel the LAAC to advertise a competitive RFP for auditing services consistent with the Sunshine Act's definition of "legal action."
- 4) Release correspondence, minutes and all related data of meetings related to the LAAC activities and meetings for Fiscal Years 2017 and 2018.

Respectfully submitted,

Eric Epstein, Coordinator  
4100 Hillsdale Road  
Harrisburg, PA 17112  
(717)-635-8615  
lechambon@comcast.net

**Enclosure**

**cc:**  
Chairman, Legislative Audit Advisory Commission  
Hon. Mark K. Keller,  
108 Ryan Building  
Harrisburg, PA 17120-2086

Speaker of the House of Representatives,  
Hon. Mike Turzai  
139 Main Capitol  
Harrisburg, PA 17120-2028

Majority Leader,  
Hon. Bryan Cutler  
110 Main Capitol Building  
Harrisburg, PA 17120-2100