

# Memorandum

Government of the District of Columbia

TO: Dr. Hardy R. Franklin  
Director  
D.C. Public Libraries

Department, OCC  
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FROM: Margaret L. Hines *MH*  
Deputy Corporation Counsel, D.C.  
Legal Counsel Division

Date: June 18, 1985

SUBJECT: Executive Sessions of the Board of Library Trustees.

By letter received by this Office on April 29, 1985, Mrs. Marguerite Kelly has requested legal advice concerning the "rules" governing "executive session" meetings of the Board of Library Trustees (the Board). She states that the Board has used such meetings "to make motions and take votes" which are formally adopted at later public meetings.

The orange-colored booklet entitled "Rules and Regulations of the Board of Library Trustees," revised November 17, 1975, refers to regular meetings, special meetings, and an annual meeting (the regular December meeting when officers of the Board are elected), but makes no mention of "executive session" meetings. Accordingly, it does not appear that the Board has ever adopted rules or regulations governing "executive session" meetings.!

Section 742 (a) of the District of Columbia Self-Government and Governmental Reorganization Act of 1973, Public Law 93-198, 87 Stat. 831, D.C. Code 5 1-1504 (a) (1981), provides:

All meetings (including hearings) of any department, agency, board, or commission of the District government, including meetings of the District Council, at which official action of any kind is taken shall be open to the public.

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! The 1975 reV1S10n of the Board's Rules and Regulations has never been published in the District of Columbia Municipal Regulations (DCMR). Compare Title 19 DCMR Chapter 8. Accordingly, these Rules and Regulations ceased to be effective on July 1, 1984. See D.C. Code § 1-1538 (a) (1984 Supp.). If the Board wishes to adopt a new set of Rules and Regulations, it must follow the rulemaking and publication provisions of the District of Columbia Administrative Procedure Act. See D.C. Code § 5 1-1506 and 1-1538 (b) (1981).

No resolution, rule, act, regulation or other official action shall be effective unless taken, made, or enacted at such meeting.

Under this provision, whatever official action the Board takes must be taken at a meeting which is open to the public. See Commissioner's Memorandum 75-6, a copy of which is attached.

The opinion of the Corporation Counsel, stated in a memorandum, dated August 21, 1978, to one of the Commissioners of the D.C. Public Service Commission, is relevant here:

On the other hand, the Commission also functions in a quasi-legislative capacity, for instance, in adopting regulations and the meetings at which final decisions are reached respecting such matters must, under the statute, be open to the public.

If the "working meetings" to which you refer are for the purposes of having a free exchange of ideas in which the Commissioners may debate between themselves the ramifications and potential impact upon the public of a series of alternative decisions, without taking a final vote which ultimately will be the decision of the Board [sic], said meetings, even if quasi-legislative in nature, would not be required to be opened to the public. If, on the other hand, at the "working meetings" (respecting quasi-legislative actions) it is the intention of the Commissioners to decide the sub-issues and ultimately adopt the agreed-upon positions, these meetings would be required to be opened for public observation. See Canney v. Board of Public Instruction of Alachua cty., 278 So. 2d, 260 (Fla. 1973).

See 3 Ope C.C. D.C. 303, 304-305 (1978).

In the cited case, the Florida Supreme Court stated the following about that state's "Sunshine Law (which is substantially similar to D.C. Code § 1-1504(a) (1981»:

The obvious intent of the Government in the Sunshine Law, supra, was to cover any gathering of some of the members of a public board where those members discuss some matters on which foreseeable official action will be taken by the board

Canney v. Board of Public Instruction of Alachua County, 278 So. 2d 260, 263 (Fla. 1973). Accord: Board of Public Instruction of Broward CO. v. Doran, 224 So. 2d 693, 698-699 (Fla. 1969), and

City of Miami Beach v. Berns, 245 So. 2d 38, 40-41 (Fla. 1971).2/

Under these opinions, it would be legally improper for members of the Board to make motions and take votes "informally" at a non-public "executive session" if the matters to which such motions and votes relate are matters concerning which the Board foreseeably will take some official action at a subsequent public meeting.

MLH

cc: John C. Hazel  
President  
Board of Library Trustees

Marguerite Kelly, Member  
Board of Library Trustees

Betty King  
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Mayor for Boards and Commissions

Avis T. Hawkins, Esquire  
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2/ Florida cases are instructive because of the similar language used in both Florida's law and the District's law, and because the District's "Sunshine" provision was introduced as an amendment to the House Self-Government bill (H.R. 9682) by Congressman Young of Florida. See Home Rule for the District of Columbia 1973-1974, Background and Legislative History of H.R. 9056, H.R. 9682 and Related Bills, etc., Chapter III, p. 2404 (1974).