

Staffeldt, Darlene

To: Scheier, James
Subject: RE: Open Meeting Law

Thank you Jim, I think this is all I need for now. I know from my School Board Trustee experience that the Open meeting law is not a clear black and white issue. Thanks, Darlene

-----Original Message-----

From: Scheier, James
Sent: Tuesday, May 21, 2002 5:14 PM
To: Staffeldt, Darlene
Cc: Cooper, Bob
Subject: RE: Open Meeting Law

Darlene:

It is difficult to advise you regarding the legality of this meeting without knowing additional details. What personnel issue or matter of individual privacy was being discussed? Whose privacy interests were at stake? Were there complaints about the library director or the "others" who were asked to leave the meeting? Did the discussion in executive session relate to an investigation of wrongdoing by the library director or others?

The Montana Supreme Court has noted the importance of protecting the privacy interests of persons who make confidential comments to public bodies regarding the performance of public officers. Missoulain v. Board of Regents, 675 P.2d 513 (1984). Thus, if the discussion in executive session involved, for example, comments by members of the public about the library director or the others who were asked to leave, those member of the public have privacy interests that would likely be entitled to protection, particularly if they indicated that they expected their comments or complaints to remain anonymous or confidential. On the other hand, the Montana Supreme Court has also recognized that 2-2-203, MCA allows an individual about whom a discussion pertains to waive his or her right to individual privacy. The Court has stated that such an individual is entitled to be notified that a meeting will involve a discussion pertaining to that individual's privacy interests, and the individual must be given an opportunity to waive the right to privacy. Goyen v. City of Troy, 915 P.2d 824 (1996). This would suggest that if the discussion during executive session involved the privacy interests of the library director or the others who were asked to leave, those persons had a right to be notified that the discussion would pertain to their privacy interests. This does not necessarily mean, however, that the library director or the others would be entitled to attend the executive session portion of the meeting.

As you may have surmised, there is no black and white answer to the library board's inquiry. Each instance of closure of a meeting must be evaluated based on the specific factual circumstances that existed. Thus, without knowing more about the reason for the closure and the precise matters that were discussed during the closure, it is not possible to advise whether the closure was legal or not. This also presents an obvious problem for the library board, since they likely cannot divulge to you the substance of the discussion in executive session (since it presumably did involve the privacy interests of one or more persons). Many of these open meeting disputes are resolved through litigation -- the newspaper sues over the closure of the meeting, and the facts come out in discovery.

Let me know if you would like to meet to discuss this in more detail.

-----Original Message-----

From: Staffeldt, Darlene

Sent: Thursday, May 16, 2002 3:08 PM
To: Scheier, James
Cc: Cooper, Bob
Subject: Open Meeting Law

Jim,

We had a public library board of trustees that had a (1) scheduled and announced meeting, (2) part of the agenda was "executive session". The Library director and others were all asked to leave at that point in the agenda. The board was in closed session for approximately twenty minutes. A reporter asked for what purpose was the meeting closed? The response was that the Chair was closing the meeting because the discussion relates to a matter of personnel issues or individual privacy, when asked if the personnel knew they could waive their rights to individual privacy, the response from Board chair was that the person did not know they were even talking about them because it was not a disciplinary situation. Was this a legal use of the open meeting law exceptions? The librarian wants to know if they can talk in closed session when no one knows what they are talking about???

Thanks for your thoughts on this. Darlene