

# Open Meeting Statutes: The Press Fights for the "Right To Know"

*Harvard Law Review*

## I. A CRITIQUE OF THE OPEN MEETING PRINCIPAL

The basic argument for open meetings is that public knowledge of the considerations upon which governmental action is based is essential to the democratic process.<sup>1</sup> The people must be able to "go beyond and behind" the decisions reached and be apprised of the "pros and cons" involved if they are to make sound judgments on questions of policy and to select their representatives intelligently.<sup>2</sup> The presence of outside observers is an invaluable aid in making such information available, for official reports, even if issued, will seldom furnish a complete summary of the discussion leading to a particular course of action.<sup>3</sup> Even though only newspaper reporters and a few interested citizens actually are present, the benefit of granting access to governmental meetings will inure to a far larger segment of the population, because those who do attend will pass on the information obtained. It is further argued that decisions which result in the expenditure of public funds ought to be made openly so that the people can see how their money is being spent;<sup>4</sup> publicity of expenditures further serves to deter misappropriations, conflicts of interest, and all other forms of official misbehavior.<sup>5</sup> Several other considerations support the principle of open meetings. Government will be more responsive to the governed if officials are able to ascertain public reaction to proposed measures. Public meetings also may operate to provide officials with more accurate information; individual citizens will be able to correct factual misconceptions, particularly in local government where the public is apt to have greater knowledge of the issues involved. Then too, as people better understand the demands of government and the significance of particular issues, they will be better prepared "to accept necessary, and perhaps difficult and unpalatable, measures essential to the public good."<sup>6</sup> Finally, open meetings foster more accurate reporting of governmental activities. Even when meetings are closed, some hint of what occurs generally reaches the press; but such reports are often incomplete and slanted according to the views of the informant.<sup>7</sup> To restrict the press to such sources of information is a disservice both to the public, which is misled, and to the officials, who may be judged on the basis of these distorted reports.<sup>8</sup>

Granting the virtue of open meetings in general, substantial objections can be made to enacting the principle as a legal requirement. Publicizing proposed governmental action may benefit citizens whose interests are adverse to the general community or harm individual reputations. In some cases, particularly when sharply conflicting interests must be accommodated, freedom from the pressure of public opinion may be desirable; the delegates to the Constitutional Convention, for example, felt constrained to work in secrecy.<sup>9</sup> Even in less unique circumstances "there is something to be said for open covenants, unopenly arrived at."<sup>10</sup> One public official has remarked that "there are many details, ramifications and opinions that no sound administrator . . . would care to express in public,"<sup>11</sup> and it appears that officials are often reluctant to request information at open meetings lest they create a public image of ignorance.<sup>12</sup> In addition, public officials are prone to waste time making speeches for the benefit of an audience, while in a closed meeting they "are less on their dignity, less inclined to oratory."<sup>13</sup> If the meeting is for preliminary consideration of action, there are additional objections. An open meeting requirement will tend to disadvantage subordinate officials by publicizing their disagreement with policies that they must administer. And publicity of proposals put forth during preliminary discussions may frustrate ultimate agreement, for an official hesitates to abandon a view that he has publicly advocated.<sup>14</sup> A final objection to an open meeting requirement arises from the tendency of the press toward "sensational" reporting. All too frequently newspaper stories are distorted by the bias of the reporter or his paper. Even when there is no bias, newspapers prefer to emphasize as "newsworthy" only "controversial matters about which there is some conflict or . . . those items which tend to make legislators appear substantially less than bright."<sup>15</sup> It has even been contended that the need for "right to know" laws has been exaggerated, as "editorials and news articles on star chamber sessions and the like have long been an easy, inevitably irrefutable, and popularly accepted part of every experienced, and frequently cynical, news editor's bag of tricks."<sup>16</sup> Although these arguments cannot be ignored, they do not compel the conclusion that a legal requirement of open meetings is untenable. Some have urged that the benefits of requiring that all governmental activity be done openly outweighs any disadvantages that may result;<sup>17</sup> perhaps a more rational approach would be to seek to devise a legal standard affording the fullest possible degree of openness while recognizing the interests promoted by governmental secrecy.