1979

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THE MINNESOTA OPEN MEETING LAW AFTER TWENTY YEARS—A SECOND LOOK

Over twenty years have passed since the Minnesota Legislature enacted the Minnesota Open Meeting Law in 1957. During the two decades that the law has been in effect, relatively few decisions of the Minnesota Supreme Court have interpreted or applied the law's provisions. This Note analyzes the law in light of these decisions and the decisions and statutes of other jurisdictions, pointing out the weaknesses and strengths of the Minnesota approach to the open meeting principle.

I. BACKGROUND OF THE OPEN MEETING PRINCIPLE

The belief that the public is entitled to greater access to meetings of government bodies has sparked the passage in all fifty states of statutes that require certain public agencies to conduct all official meetings in sessions open to the public.1 Government "in the sunshine" pursuant...
to these open meeting laws is the result of efforts of the press and concerned citizen groups during the past few decades to gain admittance to the decisionmaking processes of official bodies. Since 1950 when the attention of journalists first focused upon the problem of government secrecy through the Committee on Freedom of Information of the American Society of Newspaper Editors, open meeting advocates have had notable success in instilling their belief that the maintenance of a free, democratic society necessitates providing access to information concerning government actions.


2. Because of the increased openness that open meeting laws are said to foster, they are frequently called "sunshine laws." See, e.g., Sloat, Government in the Sunshine Act: A Danger of Overexposure, 14 Harv. J. Legis. 620 (1977). Sunshine laws should not be confused with sunset laws, which provide for the automatic termination of government agencies after a stated period unless the agencies' enabling legislation is specifically renewed by the legislature. See generally Schwartz, Administrative Law: The Third Century, 29 Ad. L. Rev. 291, 293-95 (1977).


4. See Cross, Preface to H. Cross, The People's Right to Know at xiv-xv (1953); Note, supra note 3, at 1199. The Cross book was commissioned by the Society in 1951 to provide it with a "comprehensive report on customs, laws and court decisions affecting our access to public information." Cross, supra at xv. Although a reporter had authored a previous study, the Society believed a legal analysis of the subject was necessary. See Pope, Forward to H. Cross, The People's Right to Know at vii-xi (1953).

5. In 1952, only one state had an open meeting law. See Note, supra note 3, at 1199-1200. Ten years later, 26 states had such laws. Id. at 1199. Between 1962 and 1973, nine more states had enacted laws. See Wickham, Let the Sunshine In! Open-Meeting Legislation Can Be Our Key to Closed Doors in State and Local Government, 68 Nw. U.L. Rev.
Proponents of the open meeting principle argue that freedom of information is fundamental to efficient government. If the people are excluded from official meetings of their government, proponents reason, government officials are more likely to attempt to deceive their constituents, causing an increase in suspicion of, and a decrease of confidence in, government action. Furthermore, opening deliberation of public bodies encourages greater citizen input and criticism, leading to better informed decisionmaking by official agencies. In a practical vein, proponents also suggest that the public is better prepared to accept neces-

480, 480 n.2 (1973) (noting 35 states with open meeting laws). Today, all 50 states have adopted open meeting legislation. See Sloat, supra note 2, at 621 n.8 (1977) (noting that 49 states have enacted open meeting laws since 1950, when only one state had such a law); note 1 supra (listing statutes currently in effect).

6. See Wickham, supra note 5, at 481. A forceful expression favoring public access to government was made by Harold Cross: "Public business is the public's business. The people have the right to know. Freedom of information is their just heritage. Without that the citizens of a democracy have but changed their kings." Cross, supra note 4, at xiii.

7. See Comment, Open Meeting Laws: An Analysis and Proposal, 45 Miss. L.J. 1151, 1161 (1974). The importance of open meetings in the political process was recognized by the Florida Supreme Court in an early decision interpreting that state's sunshine law. The court stated:

The right of the public to be present and to be heard during all phases of enactments by boards and commissions is a source of strength in our country. During past years tendencies toward secrecy in public affairs have been the subject of extensive criticism. Terms such as managed news, secret meetings, closed records, executive sessions, and study sessions have become synonymous with "hanky panky" in the minds of public-spirited citizens. One purpose of the Sunshine Law was to maintain the faith of the public in governmental agencies. Regardless of their good intentions, these specified boards and commissions, through devious ways, should not be allowed to deprive the public of this inalienable right to be present and to be heard at all deliberations wherein decisions affecting the public are being made.

Board of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969).

8. See Note, supra note 3, at 1201. In Town of Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974), the Florida Supreme Court commented on the need for open meetings to channel the public's views:

Every meeting of any board, commission, agency or authority of a municipality should be a marketplace of ideas, so that the governmental agency may have sufficient input from the citizens who are going to be affected by the subsequent action of the municipality. The ordinary taxpayer can no longer be led blindly down the path of government, for the news media, by constantly reporting community affairs, has made the taxpayer aware of governmental problems. Government, more so now than ever before, should be responsive to the wishes of the public. These wishes could never be known in nonpublic meetings, and the governmental agencies would be deprived of the benefit of suggestions and ideas which may be advanced by the knowledgeable public.

Also, such open meetings instill confidence in government. The taxpayer deserves an opportunity to express his views and have them considered in the decision making process.

Id. at 475.
sary but unpopular decisions if it is aware of the policy options available to public officials and if it is able to participate in the debate leading to the final determination.9

Opponents of open meeting laws, looking to the effects of prohibiting closed sessions, contend that press coverage of official deliberations would be incomplete, inaccurate, and distorted due to the tendency of the media to focus on sensational or controversial issues.10 Proponents, on the other hand, point out that the open meeting principle ensures more accurate reporting because the press is able to attend the meetings and not rely on "leaked" information.11 Opponents also assert that public officials will indulge in more speechmaking and less decisionmaking if they know that their meetings will be subject to public scrutiny.12 Furthermore, public officials, according to the open meeting opponents, will be less candid in open sessions and hence more likely to continue advocating unpopular positions on issues because they are afraid of appearing inconsistent.13 An additional objection is found in the possibility of damaging the reputations and morale of public employees if employee performance is discussed candidly in open meetings.14 The opponents' concerns have not prevented state legislatures from enacting open meeting laws. Certain exceptions to the principle have been recognized,15 perhaps in response to the legitimate objections of the opponents, but the open meeting principle has been firmly established in the United States.16

The open meeting principle has been the creature of legislation because neither the common law17 nor the United States Constitution18 required government agencies to meet in open sessions. The common

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9. See Note, supra note 3, at 1201.
10. See id. at 1202.
11. See id. at 1201.
12. See id. at 1202; Comment, supra note 7, at 1162 (prolonged unproductive meetings could result when officials use open sessions to "grandstand for the benefit of constituents"). Similarly, public officials may prefer to remain silent on issues of which they are ignorant than to appear unprepared. See Note, supra note 3, at 1202.
13. See Note, supra note 3, at 1202.
14. See Comment, supra note 7, at 1162. This objection may explain the preponderance of statutes that permit individual employee performance to be discussed in private. See generally note 127 infra (listing states with such exceptions).
15. See notes 127-67 infra and accompanying text (discussion of exceptions to open meeting principle).
16. See note 5 supra.
law rule is best illustrated by the practice of the English Parliament. For many decades, Parliament denied nonmembers, or "strangers," access to its proceedings. 19 When the primary motive for this policy—fear of Crown reprisal—subsided in the late seventeenth century, Parliament continued to hold its sessions in secret because Members preferred to conceal the debate and vote on crucial matters from their constituents. 20 Not until the nineteenth century, but solely by custom, were the press and public granted entry to Parliamentary debates. 21 Legislative secrecy was extended to the American colonies by the English. 22 The press was excluded from the meetings of colonial legislatures and prohibited from publishing accounts of the proceedings they were permitted to attend. 23 Secrecy also surrounded the sessions of the Constitutional Convention when delegates resolved to conduct the convention behind closed doors. 24 The United States Senate followed the tradition of secrecy, holding debate in private until 1794. 25 Today, Congress regularly meets in sessions open to the public, 26 but many major decisions are reached in committee, an estimated two-thirds of which are closed to the public. 27 Although Congress has enacted a federal sunshine law, 28 it did not

19. See H. Cross, THE PEOPLE'S RIGHT TO KNOW 180-81 (1953). In addition, severe penalties were imposed for the publication of reports of Parliamentary proceedings. Id. at 181; Note, supra note 3, at 1203.
20. See H. Cross, supra note 19, at 180; Note, supra note 3, at 1203; Comment, supra note 7, at 1155.
21. See H. Cross, supra note 19, at 181; Note, supra note 3, at 1203. Formerly, the press and the public could be excluded upon the request of one Member of Parliament, but a majority vote has been required for exclusion since 1874. See id. Although Parliament presently encourages the reporting of its activities, see id.; Comment, supra note 7, at 1155, presence at its sessions remains a matter of grace and not of right. See H. Cross, supra note 19, at 181.
22. See Comment, supra note 7, at 1155-56. The author suggests that secrecy in government was one factor that precipitated the American Revolution. Id. at 1156.
23. See H. Cross, supra note 19, at 182.
24. See Note, supra note 3, at 1202.
25. See id. at 1203; Comment, supra note 7, at 1156. The House of Representatives, however, has convened publicly throughout its history. See Note, supra note 3, at 1203; Comment, supra, at 1156.
26. See Comment, supra note 7, at 1156.
27. See Note, supra note 3, at 1203; cf. Comment, supra note 7, at 1157 (characterizing Senate committee meetings as "shrouded in secrecy"). In 1974, 88% of the House committee meetings in which legislation was drafted held open sessions compared with only 80% in 1973. See Comment, supra note 7, at 1156.
28. Government in the Sunshine Act § 3, 5 U.S.C. § 552b (1976). The Act covers agencies "headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the president." Id., 5 U.S.C. § 552b(a)(1). This description encompasses only federal agencies, see Sloat, supra note 2, at 625, including the CAB, ICC, FCC, FTC, NLRB, and SEC. See Common Cause, The First Year of Sunshine: Federal Agency Compliance with the Government in the Sunshine Act of 1976, at 23 app. (Aug. 1978). Agency compliance with the Act has generally been
include itself within the scope of the law.

Constitutional arguments in favor of open meetings have been advanced by many commentators. Contending that the primary rationale behind the first amendment guarantees of freedom of speech and a free press was the belief that the people should be kept informed of the operation of their government, commentators have sought a basis for a first amendment right of access to government meetings and materials. No reported decision, however, has addressed this particular issue. In several decisions concerning the freedom of the press to pursue matters in areas not generally open to the public such as prisons, the United States Supreme Court has rejected arguments based on the right of the media to collect news. By analogy, the constitutional right of access to government meetings is at best tenuous.

The responsibility for providing greater access to government meetings therefore passed to the legislatures. The results have been far from uniform, although the principle has been universally accepted. Less than exemplary. During the first full year of operation of the law, fewer than 40% of the meetings of the 47 agencies were fully open to the public. See id. at 7. Three agencies, the ICC, CAB, and TVA, have substantially complied with the federal sunshine law, but seven agencies (Export-Import Bank, NLRB, Occupational Safety and Health Review Commission, United States Parole Commission, Federal Reserve Board, Commodity Future Trading Commission, and Federal Home Loan Bank Board) have displayed a particular lack of openness. See id. at 10-14.


29. See, e.g., H. Cross, supra note 19, at 31-32; Parks, supra note 17; Note, supra note 18.

30. See Parks, supra note 17, at 9-10; Note, supra note 18, at 212.

31. See Parks, supra note 17, at 10; Note, supra note 3, at 1204.

32. See, e.g., Houchins v. KQED, Inc., 438 U.S. 1 (1978) (first amendment does not compel government to release information); Pell v. Procunier, 417 U.S. 817, 834 (1974) (Constitution does not impose upon government “the affirmative duty to make available to journalists sources of information not available to members of the public generally”); Branzburg v. Hayes, 408 U.S. 665, 684 (1972) (noting, with apparent approval, that “the press is regularly excluded from . . . the meetings of . . . official bodies gathering in executive sessions”); Zemel v. Rusk, 381 U.S. 1, 16-17 (1965) (“The right to speak and publish does not carry with it the unrestrained right to gather information.”). These decisions illustrate the principle that the right of the press to gather information does not extend beyond the right of the general public to do the same. As Justice Douglas has observed, however, “[t]he press has a preferred position in our constitutional scheme, not to enable it to make money, not to set newsmen apart as a favored class, but to bring fulfillment to the public’s right to know.” Branzburg v. Hayes, 408 U.S. at 721 (Douglas, J., dissenting); see Pell v. Procunier, 417 U.S. at 841 (Douglas, J., dissenting) (average citizen relies on free press for information about government activities).

33. See Note, supra note 3, at 1204.

34. One commentator has noted that:

Open meeting acts run the entire spectrum, from those which on their face provide public access to governmental meetings almost without exception, to
issues raised in interpreting the various open meeting laws do concern some common areas. Three issues have provoked the most litigation: first, what constitutes a meeting under the law; second, what is the scope of the available exceptions from the law; and third, how can the law be enforced to achieve its underlying purpose. A resolution of these issues will determine the effectiveness of the open meeting principle in a particular jurisdiction.

This Note will examine the Minnesota Open Meeting Law with respect to these and other issues, in light of the holdings of the Minnesota Supreme Court, and with regard to the decisions and statutes in other states. Rather than a practical analysis of the effect of the Minnesota law upon the operation of government agencies within the state, this Note will develop the legal theories and applications of the law to determine whether it is fulfilling its primary purpose of keeping government open to the people.

II. THE MINNESOTA OPEN MEETING LAW

Minnesota joined the movement for more open government in 1957 when the Minnesota Open Meeting Law was enacted. As originally adopted, the law applied to all meetings of local governing bodies and most of their subordinate boards and agencies. State agencies were conspicuously absent as was any provision for enforcing the law. A minor change was made in 1967 when the requirement of recording officials' votes on certain money appropriations was added. Sweeping changes in the law occurred in 1973 when the statute was amended a second time. Coverage was extended to state governmental entities and those which grudgingly permit access to only the final actions taken by a few specifically designated agencies. They vary from a few terse sentences to several pages of fine print.

Wickham, supra note 5, at 482 (footnote omitted). See also Project, Government Information and the Rights of Citizens, 73 Mich. L. Rev. 971, 1190 (1975) (state approaches to implementation of open meeting principle have resulted in “considerable variation”).

35. See note 1 supra.

36. Such a study was undertaken by the School of Public Affairs of the University of Minnesota in 1976. See generally M. Gleson, M. Schweiger & M. Bernardson, Effects of the Minnesota Open Meeting Law on Local Governments (School of Pub. Affairs, Univ. of Minn., Dec. 1976) [hereinafter cited as Effects of the Minnesota Open Meeting Law]; see also Bagley, Impact of the Sunshine Act on the Public’s Access to Information and on the Internal Operations of Government Agencies, 34 Bus. Law. 1075 (1979) (general discussion of effect of open meeting legislation).


38. See id.


all subordinate components of governing bodies and an enforcement provision was added.\textsuperscript{41} With these and other technical amendments,\textsuperscript{42} the current version of the Minnesota Open Meeting Law provides:

Subdivision 1. Except as otherwise expressly provided by statute, all meetings, including executive sessions, of any state agency, board, commission or department when required or permitted by law to transact public business in a meeting, and the governing body of any school district however organized, unorganized territory, county, city, town, or other public body, and of any committee, subcommittee, board, department or commission thereof, shall be open to the public, except meetings of the board of pardons and the corrections board. The votes of the members of such state agency, board, commission or department or of such governing body, committee, subcommittee, board, department or commission on any action taken in a meeting herein required to be open to the public shall be recorded in a journal kept for that purpose, which journal shall be open to the public during all normal business hours where such records are kept. The vote of each member shall be recorded on each appropriation of money, except for payments of judgments, claims and amounts fixed by statute. This section shall not apply to any state agency, board, or commission when exercising quasi-judicial functions involving disciplinary proceedings.

Subd. 2. Any person who violates subdivision 1 shall be subject to personal liability in the form of a civil penalty in an amount not to exceed $100 for a single occurrence. An action to enforce this penalty may be brought by any person in any court of competent jurisdiction where the administrative office of the governing body is located. Upon a third violation by the same person connected with the same governing body, such person shall forfeit any further right to serve on such governing body or in any other capacity with such public body for a period of time equal to the term of office such person was then serving. The court determining the merits of any action in connection with any alleged third violation shall receive competent, relevant evidence in connection therewith and, upon finding as to the occurrence of a separate third violation, unrelated to the previous violations issue its order declaring the position vacant and notify the appointing authority or clerk of the governing body. As soon as practicable thereafter the appointing authority or the governing body shall fill the position as in the case of any other vacancy.

\textsuperscript{41} See id. § 1, 1973 Minn. Laws 1835. The amendment also gave the statute its official name. See id. § 3, 1973 Minn. Laws 1836 (current version at MINN. STAT. § 471.705(3) (1978)).

Subd. 3. This section may be cited as the “Minnesota Open Meeting Law”.

A. A Statement of Purpose

A statement of the purpose of the law is, according to one commentator, one of the three most important aspects in drafting open meeting legislation. A clear statement of the legislature's reasons for opening government deliberations and actions to public scrutiny, this commentator contends, leads to more effective application of the statute when it is judicially construed. Such a statement also reminds public officials that the open meeting principle cannot be ignored for the sake of expediency. Many state legislatures, consistent with this observation, have drafted purpose sections in their open meeting laws. A good example is found in Washington's Open Public Meeting Act:

The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority do not give their public servants the right to decide what is good for them to know and

44. See Wickham, supra note 5, at 488. The other two principles relate to the need for judicial discretion in drawing the line between public and private meetings, see id. at 494, and for realistic enforcement provisions. See id. at 495.
45. See id. at 490, 494.
46. See Sullivan v. Credit River Township, 299 Minn. 170, 176, 217 N.W.2d 502, 506 (1974) (“In our judgment the people's right to know is too precious to yield to the claims of a governing body that it is inconvenient or impractical to inform the public of its meetings.”); Comment, supra note 7, at 1163.
what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. 48

When the Minnesota Open Meeting Law was first enacted, the Legislature neglected to include a statement of purpose. Subsequent amendments have not remedied this omission. The absence of a statement of purpose, however, has not prevented the Minnesota Supreme Court from liberally construing the law or from expressing its understanding of the law’s purpose.

The main purpose of the Minnesota Open Meeting Law, according to the Minnesota court, is to prohibit the taking of actions at secret meetings, where the public cannot become fully informed about a decision or cannot detect improper influences. 49 Thus, the court has stated that the law assures the public of its right to be informed 50 and to provide the public with the opportunity to express its views. 51 The Minnesota court’s understanding of the open meeting principle is consistent with the views taken by other courts. In other jurisdictions, courts have found the purpose of the open meeting principle to include the prohibition against star chamber sessions, 52 the requirement for public bodies to make decisions under public observation, 53 and the maintenance of the people’s faith in government. 54

Although a statement of legislative purpose would be a worthwhile

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48. Wash. Rev. Code Ann. § 42.30.010 (1972). In the Government in the Sunshine Act, Congress stated:

It is hereby declared to be the policy of the United States that the public is entitled to the fullest practicable information regarding the decisionmaking processes of the Federal Government. It is the purpose of this Act to provide the public with such information while protecting the rights of individuals and the ability of the Government to carry out its responsibilities.


49. See Lindahl v. Independent School Dist. No. 306, 270 Minn. 164, 167, 133 N.W.2d 23, 26 (1965). The court noted that while the law requires actions to be taken in the public view, it does not require that actions be taken "in a place most advantageously suited for public viewing." Id.


54. See, e.g., Board of Pub. Instruction v. Doran, 224 So. 2d 693, 699 (Fla. 1969); McCarty v. Board of Regents, 231 Ga. 22, 23, 200 S.E.2d 117, 119 (1973) (law "seeks to eliminate . . . closed meetings which engender in the people a distrust of its officials").
addition to the Minnesota Open Meeting Law, its absence does not appear to affect the scope or application of the open meeting principle in Minnesota. The basic premise behind the open meeting principle has been adequately stated by the Minnesota Supreme Court. Mere enactment of the law may be sufficient to impress the principle upon the public and public officials. Nevertheless, a clear statement of purpose, such as is found in the Washington statute, would be a constant reminder that the open meeting principle is a fundamental characteristic of a democratic society.

B. Coverage

A major consideration faced by legislators in drafting open meeting legislation is describing the government bodies and agencies to be covered by the law. The effectiveness of the open meeting principle can be diluted if the description of the public bodies subject to the law is vague or unclear.

To avoid a limiting construction of the open meeting law, many states have attempted to define coverage as broadly as possible. Some statutes, for example, require every agency that performs a "government function" to hold public meetings. A6 Other states extend coverage to all bodies supported in whole or in part by public funds. A6 This approach

55. See ALA. CODE §13-5-1 (1975) (any body to which legislative or judicial power is delegated); COLO. REV. STAT. § 24-6-402(1) (Cum. Supp. 1978) (any body that discusses public business or takes formal action); GA. CODE ANN. § 40-3301(a) (Cum. Supp. 1978) (meetings at which "official action" is taken); HAWAII REV. STAT. § 92-2(1) (1976) (bodies required to conduct meetings and to take official action); LA. REV. STAT. ANN. § 42:5 (West Cum. Supp. 1979) (bodies with policymaking or administrative functions); MASS. GEN. LAWS ANN. ch. 30A, § 11A (West 1979) (bodies that serve public purpose); MICH. COMP. LAWS ANN. § 15.262(a) (Supp. 1967-1979) (bodies empowered to exercise a "governmental or proprietary authority or . . . function"); NEB. REV. STAT. § 84-1409(1) (1976) (subcommittees must be authorized to take "formal action" before law applies); N.H. REV. STAT. ANN. § 91-A:1-a (Supp. 1977) (bodies transacting functions that affect citizens); N.J. STAT. ANN. § 10:4-8 (West 1976) (voting bodies that perform "public government function"); N.Y. PUB. OFF. LAW § 97(2) (McKinney Cum. Supp. 1978-1979) (bodies that perform governmental functions); N.C. GEN. STAT. § 143-318.2(b) (Supp. 1978) (bodies that exercise legislative, policymaking, quasi-judicial, administrative, or advisory functions); PA. STAT. ANN. tit. 65, § 261 (Purdon Cum. Supp. 1979-1980) (includes bodies created by any statute that states body is to perform "essential governmental function"); TENN. CODE ANN. § 8-4402 (Cum. Supp. 1978) (bodies with authority to make decisions or recommendations).

56. See ALA. CODE § 13-5-1 (1975) (bodies charged with duty of disbursing state funds); ALASKA STAT. § 44.62.310(a) (1976) (supported by or spending public funds); ARIZ. REV. STAT. ANN. § 38-431(4) (Cum. Supp. 1978-1979) (supported by or expending tax revenues); ARK. STAT. ANN. § 12-2805 (Cum. Supp. 1977) (supported by or expending public funds); CAL. GOV'T CODE § 54952 (West 1966) (subordinate components of local agencies supported by agency funds); DEL. CODE ANN. tit. 29, § 10002(a) (Cum. Supp. 1978) (bodies that receive or expend public funds or make recommendations to such bodies); ILL. ANN. STAT. ch. 102, § 42 (Smith-Hurd Supp. 1979) (includes bodies supported by tax revenue); KAN.
appears to be the most inclusive provision employed in open meeting laws. By basing coverage on the receipt or expenditure of public funds, the open meeting law offers certain, workable criteria and a comprehensive standard by which to determine application of the law to a particular agency. The public funds approach, however, may be too inclusive. Under it, the open meeting laws have been extended, rightly or wrongly, to a city-owned utility corporation and a private, nonprofit association of colleges and secondary schools. Possibly because coverage was conceived to be too broad, the Virginia Legislature limited application of the Virginia Freedom of Information Act to bodies "supported wholly or principally by public funds."

Despite the strengths of the public funds approach, greater certainty is afforded by specifying the government bodies to which the open meeting laws apply. Minnesota has adopted this approach, stating expressly in the law that meetings and executive sessions of the governing bodies of school districts, counties, municipalities, or other public bodies "required or permitted by law to transact public business in a meeting," must be open to the public. The benefit of this approach lies in the

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57. See Note, supra note 3, at 1205.
58. See Raton Pub. Serv. Co. v. Hobbes, 76 N.M. 535, 538-40, 417 P.2d 32, 33-36 (1966). The court rejected the utility's argument that it was not involved in the use of public funds because its income was derived from the sale of electric power because the utility was required to transfer to the city treasury all funds not spent on operation or maintenance. See id. at 540-41, 417 P.2d at 35.
59. See North Cent. Ass'n of Colleges & Schools v. Troutt Bros., 261 Ark. 378, 548 S.W.2d 825 (1977). The fact that the association chairman was a public employee and that his secretary, also a public employee, performed certain jobs for the association and that the association dues were paid by schools supported by public funds was the basis for the court's decision, even though the association members otherwise served voluntarily and without compensation. See id. at 379-81, 548 S.W.2d at 826.
61. Minn. Stat. § 471.705(1) (1978). This section, however, does not apply to any state agency, board, or commission when exercising quasi-judicial powers with respect to disciplinary actions.

certainty it provides. Public officials cannot assert that the law was not intended to cover their agency when this "shot-gun" approach has been employed. More importantly, extensive enumeration provides guidelines for courts called upon to interpret the law. The risk inherent in every other statutory method—that courts will give the statute an interpretation more restrictive than intended by the legislature—is less likely to occur. Finally, when a broad enumeration is employed, the legislature is more prone to specify the public bodies not intended to be covered by the law. Thus, in Minnesota, an express exception is provided for the state board of pardons, the corrections board, and any body "exercising quasi-judicial functions involving disciplinary proceedings."

In addition to the express inclusion of every type of public body to which the law applies, the Minnesota statute has another strong feature. Subordinate components, such as committees, subcommittees, and boards of the public bodies covered by the law are expressly included. Were the statute less explicit, the risk would exist that courts would not extend coverage to these subordinate parts of a public agency where many of the important preliminary steps in government decisionmaking are taken.

Despite the expansive coverage of the Minnesota Open Meeting Law, it has not been extended to the Legislature. The Minnesota Constitution does require meetings of each house to be conducted in open sessions, but the same provision also permits the members to exclude the public when secrecy is required. In a recent session, bills that would have


63. See MINN. STAT. § 471.705(1) (1978).

64. See id. Although the language in the statute literally applies solely to the subordinate components of municipal governments, the Minnesota Attorney General has indicated that subordinate components of state agencies are subject to the law. See Op. Minn. Att'y Gen. 10-b (July 3, 1975) (advisory panels of state arts council required to conduct open meetings).

65. Cf. Comment, supra note 62, at 265-66 (agencies should be prevented from using committees as method of circumventing the statute).

66. See MINN. CONST. art. 4, § 14 ("Each house shall be open to the public during its sessions except in cases which in its opinion require secrecy.").

67. See id.
extended the open meeting principle to the Legislature were introduced, but never advanced beyond committee. 68

The Minnesota Legislature therefore has adopted the simplest but the most precise approach to the issue of coverage. With enumeration of the types of government bodies subject to the Minnesota Open Meeting Law, the Legislature has foreclosed the possibility of controversy over the basic question raised by open meeting laws.

C. Meetings

A more difficult issue than describing the government entities to be included within the law is defining which meetings are required to be open under the law. A definition of meeting must address two problems: first, whether a particular formal meeting must be open and second, whether a particular gathering of public officials is engaged in a meet-

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68. Both H.F. 702, 70th Minn. Legis., 1977 Sess., introduced on March 3, 1977, see 1 MINN. H.R. JOUR. 339 (1977), and H.F. 1167, 70th Minn. Legis., 1977 Sess., introduced on March 30, 1977, see 1 MINN. H.R. JOUR. 754 (1977), would have amended the Minnesota Open Meeting Law by adding a clause requiring the Legislature and its committees, subcommittees, and commissions to meet in public. Both bills, which were identical in substance, were referred to the Committee on Rules and Legislative Administration, see id. at 339, 754, but were never referred to the full House.

Meetings of legislatures in several states are required to be open to the public. See ALASKA STAT. § 44.62.310(a) (1976) (meetings of legislative bodies); CONN. GEN. STAT. ANN. § 1-18a(a) (West Cum. Supp. 1979) (definition of agency includes any legislative office in the state); IDAHO CODE § 67-2346 (Cum. Supp. 1979) (legislative committees required to conduct open sessions); IND. CODE ANN. § 5-14-1.5-2(a)(1) (Burns Supp. 1978) (public agency includes any authority "by whatever name" that exercises legislative power); KAN. STAT. ANN. § 75-4318(a) (Cum. Supp. 1978) (law applies unless displaced by House or Senate rule); MISS. CODE ANN. § 25-41-3(a) (Cum. Supp. 1978) (special legislative committees, but not subcommittees and conference committees, included); MO. ANN. STAT. § 610.010(2) (Vernon Supp. 1953-1978) (any constitutional government entity included); N.H. REV. STAT. ANN. § 91-A:1-a (Supp. 1977) (General Court and executive sessions of committees included); N.M. STAT. ANN. § 10-15-2 (1978) (separate section applicable to legislature); PA. STAT. ANN. tit. 65, §§ 261, 267 (Purdon Supp. 1979-1980) (General Assembly sessions, hearings to consider bills or to take testimony required to be open); TEX. REV. CIV. STAT. ANN. art. 6252-17(2)(b) (Vernon Cum. Supp. 1978-1979) (legislature included); VT. STAT. ANN. tit. 1, § 313(d) (Cum. Supp. 1978) (legislature included within section limiting reasons for closed sessions); VA. CODE § 2.1-341(a) (1979) (any legislative body included); W. VA. CODE § 6-9A-2(6) (1979) (any legislative body included); cf. N.C. GEN. STAT. § 143-318.4(10) (1978) (committees of General Assembly have inherent right to meet in executive sessions if in best interests of state or to prevent "personal embarrassment"); R.I. GEN. LAWS § 42-46-2(a) (1977) (any department of legislative branch); S.C. CODE § 30-40-80(b) (Cum. Supp. 1978) (legislative committees subject to provisions requiring posting of meeting times). A few states have expressly excluded legislatures from the acts. See HAWAI'I REV. STAT. § 92-10 (1976); KY. REV. STAT. ANN. § 61.810(9) (Baldwin Cum. Supp. 1978) (committees of the General Assembly other than standing committees exempt from law); MASS. GEN. LAWS ANN. ch. 30A, § 11A (West 1979); NEV. REV. STAT. § 241.015(2) (1977); OKLA. STAT. ANN. tit. 25, § 304(1) (West Cum. Supp. 1978-1979); WYO. STAT. § 9-11-102(a)(ii) (1977).
Some legislatures have attempted to resolve these issues by inserting a definition of meeting in their open meeting statutes. A few of


these statutes simply define a meeting as a gathering in which a government agency takes official action. Far more prevalent, however, are statutes that encompass deliberation as well as action. Other statutes focus upon the number of members of a public agency present at a gathering, such as a majority or a quorum, as the determinative factor in defining meetings subject to the open meeting requirement.

None of these approaches offers a final solution to the problem. The California and Florida open meeting laws, for example, are "official action" meeting statutes. Courts in those states initially applied the laws restrictively, only to meetings in which formal action, such as voting, took place. The weakness of this approach is that it allows


76. See Adler v. City Council, 184 Cal. App. 2d 753, 770, 7 Cal. Rptr. 805, 810 (1960) (open meeting law "not directed at anything less than a formal meeting"); Turk v. Richard, 47 So. 2d 543, 544 (Fla. 1950) (meetings are "formal assemblages of [members of a public agency] sitting as a joint deliberative body"). Courts in other jurisdictions have reached similar conclusions. See, e.g., Waters v. City of Birmingham, 282 Ala. 104, 109-10, 209 So. 2d 388, 393 (1968) (discussions held prior to formal meeting not subject to open meeting law even though agenda discussed); Selkowe v. Bean, 109 N.H. 247, 249-50, 249
public officials to conduct "rerun" voting in public after reaching decisions in private. Indeed, under such a restrictive application, little need exists for an open meeting statute because the public could discover how officials voted under an open record law.

Later, the California and Florida courts broadened the scope of their statutes by applying them to meetings at which official action or deliberation occurred. The Florida Supreme Court concluded, after an appeal court applied the law to all phases of the decisionmaking process, that the statute was intended to cover those meetings at which public officials discuss matters that foreseeably would result in the taking of official action. The "foreseeable action" standard, the supreme court believed, would encompass a greater number of meetings than an "official action" standard.

The Minnesota Open Meeting Law contains no definition of meeting and the Minnesota court has yet to fashion a definitive standard by which to determine if a particular gathering of public officials is included within the statute. In several cases, the court has emphasized that the opportunity for public input is an important factor to be consid-

A.2d 35, 36-37 (1969) (no violation of open meeting law when city council finance committee met in private to discuss city budget but did not take any action on budget); Schults v. Board of Educ., 86 N.J. Super. 29, 46-47, 205 A.2d 762, 772 (App. Div.) (closed session did not violate open meeting law because agency took no final action during session), aff'd, 45 N.J. 2, 210 A.2d 762 (1964); Beacon J. Publishing Co. v. City of Akron, 3 Ohio St. 2d 191, 198-99, 209 N.E.2d 399, 404-05 (1965) (only meetings in which resolutions, rules, regulations, or other formal matters are adopted are subject to open meeting law).

77. See Wickham, supra note 5, at 492-93.

78. See Times Publishing Co. v. Williams, 222 So. 2d 470, 473-74 (Fla. Dist. Ct. App. 1969) (legislature must have intended more in open meeting law than merely permitting public to attend meetings involving official action or formal voting because formal agency actions are "matters of record and easily ascertainable").

79. See Sacramento Newspaper Guild v. Sacramento County Bd. of Supervisors, 263 Cal. App. 2d 41, 47-51, 69 Cal. Rptr. 480, 485-87 (1968); Board of Pub. Instruction v. Doran, 224 So. 2d 696, 698 (Fla. 1969). The California court identified "deliberation and action as dual components of the collective decision making process." 263 Cal. App. 2d at 47, 69 Cal. Rptr. at 485. Thus, the process includes preliminary factfinding as well as the ultimate decisionmaking. See id. at 47-48, 69 Cal. Rptr. at 485. In order to prevent the emasculation of the legislative intent as embodied in the state's open meeting law, the court held that the statute "extends to informal sessions or conferences of the board members designed for the discussion of public business." Id. at 51, 69 Cal. Rptr. at 487. In the Sacramento Newspaper Guild case, an Elks Club luncheon attended by the county board of supervisors was found to be a meeting within the terms of the statute. See id.

80. See Times Publishing Co. v. Williams, 222 So. 2d 470 (Fla. Dist. Ct. App. 1969). The court reasoned that each stage of the decisionmaking process, from discussion to formal action, is an integral element of the ultimate "action." See id. at 473-74.


82. See 224 So. 2d at 698.
ered in determining whether a specific meeting should be open to the public. Meetings held outside the territorial confines of a school district, for example, have been condemned as violations of the law, as have special meetings held without prior notice to the public. In *Lindahl v. Independent School District No. 306*, on the other hand, the court found no violation of the Minnesota law in a situation clearly within the purview of an “official action” statute. *Lindahl* involved a school board meeting held in the superintendent’s office immediately following public discussion of a proposed bond issue. Because the public had had an opportunity to express its views at the public meeting and because the court found no evidence of devious motives in the board’s adjourning to the superintendent’s office, the court held that the meeting was in compliance with the law. The court cautioned, however, that failure to invite the public to such a meeting might be a more important consideration in other circumstances.

The result of the Minnesota court’s pragmatic approach is to force public officials to justify closing a meeting, which may act as a deterrent to violations of the law. The approaches discussed above are useful in determining when an agency is required to open its regular formal meetings to the public. Less clear, however, is the standard to be used in determining when informal gatherings must be open. The states that have adopted the quorum or majority approach to the open meeting law have attempted to resolve this problem by referring to the number of officials present at a particular gathering. This approach is sound because it requires meetings to be open when a possibility of official action exists. Less clear are situations in which officials encounter one another in less formal surroundings. In such situations, the public’s need for access to government must be balanced with the speech and associational rights of public officials. Purely social gatherings of public offi-

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83. See notes 49-51 supra and accompanying text.
85. See Sullivan v. Credit River Township, 299 Minn. 170, 174, 217 N.W.2d 502, 505 (1974) (“The language of the statute directing that meetings be open to the public is meaningless if the public has no knowledge that the meeting is to take place.”).
86. 270 Minn. 164, 133 N.W.2d 23 (1965).
87. See id. at 167, 133 N.W.2d at 26.
88. See id.
89. See id. at 167-68, 133 N.W.2d at 26. The court noted that the plaintiff had failed to introduce sufficient evidence of the board’s intent to conceal deliberations and bar spectators, indicating that the burden of proving a violation is on the party who challenges a public body’s compliance with the law and will not be complicated by an apparent presumption that the body has acted lawfully. See id. at 168, 133 N.W.2d at 26.
cials, for example, should not be subject to open meeting legislation because even public officials have a reasonable expectation of privacy in such circumstances. This viewpoint is reflected in a number of statutes that specifically exempt social gatherings or chance encounters between officials from coverage. The distinction between an official’s private and public life is less clear in other circumstances, however. For example, one member of a five-member city council in a small Minnesota city may encounter a fellow council member at a local cafe. Besides discussing the weather, the two briefly discuss some general council matters. Does this encounter and the ensuing discussion about council matters constitute a meeting subject to the Minnesota Open Meeting Law? Although the court has not yet answered this question, the Attorney General, in what has become a controversial opinion, indicated in 1974 that such an encounter would be a meeting within the meaning of the statute. A gathering, however informal, of less than a quorum of a public body, the Attorney General observed, "might well subvert the law's purposes just as effectively as a deliberation between a quorum or more."

91. See Channel 10, Inc. v. Independent School Dist. No. 709, 298 Minn. 306, 325, 215 N.W.2d 814, 827 (1974) ("strict social get-together" at which no public business is discussed "obviously" outside open meeting law); Comment, supra note 7, at 1170 (members of public bodies should be allowed private social lives during nonworking hours).


The Wisconsin law takes the position that if half or more of the members of a public body meet, a rebuttable presumption is created that the meeting is for the purpose of exercising the body's responsibilities and hence must be open to the public. See Wis. Stat. Ann. § 19.82(2) (West Cum. Supp. 1979-1980). A different approach is indicated by the Colorado law, which requires all meetings between two or more members of a public body to be open. See Colo. Rev. Stat. § 24-6-402(1) (Cum. Supp. 1978).


94. Id.
The Attorney General’s interpretation may be unreasonably restrictive because it makes the law applicable to what, in the hypothetical situation outlined above, is essentially a chance encounter between colleagues who might naturally discuss a common interest, their council work. Informal exchanges between officials may be necessary to generate ideas and policy alternatives and should be exempted from the open meeting requirement. Restricting discussion among officials to open meetings may actually be detrimental to the public interest because officials may not examine issues as fully or candidly in public as they might in discussions among themselves.

On the other hand, private discussions among officials of different public bodies, the Attorney General recently concluded, may not be, under some circumstances, a meeting subject to the law. The Attorney General observed that “private deliberations among members of the same body could result in decisions being reached by the membership as a whole—or by a number of members sufficient to affect the result of an action—without the public being aware of the reasons the members have presented to one another for favoring or rejecting the action.”

This possibility, the Attorney General reasoned, is not ordinarily present when a member of one public body meets with a member of another public body. Such meetings therefore were not required to be conducted in public. The Attorney General cautioned, however, that if these kinds of encounters were used to circumvent the law—for example, by using a nonmember as an intermediary between members of one public body—they may violate the open meeting law.

Public officials reported in a survey conducted in 1976 that the number of private discussions between officials had remained about the same since the Attorney General’s 1974 opinion declared such discussions subject to the law. Some officials, particularly in large cities and large school districts, did report a decrease in the number of private

95. The Attorney General noted that the Channel 10 court had indicated that chance encounters were outside the law if no public business was discussed. The Attorney General’s opinion addressed the consequences when public business was discussed. See id.

96. See Little & Tompkins, supra note 90, at 473; Wickham, supra note 5, at 481.

97. See Little & Tompkins, supra note 90, at 473.


99. Id.

100. See id.

101. See id.

102. See Effects of the Minnesota Open Meeting Law, supra note 36. A questionnaire was mailed to elected and appointed officials, newspaper editors, and the League of Women Voters in a random sample of local jurisdictions representing 60 counties, 60 cities, and 60 school districts. Id. at 1. Responses were received from 40% of the individuals surveyed and from 94% of the 180 jurisdictions. Id. at b-3. Follow-up interviews were conducted with 22 public officials, 20 representatives of the news media, and 13 members of the League of Women Voters. Id. at b-4.
discussions, but the great majority of elected officials reported that the number of such private discussions actually had increased.

Because deliberations by public officials are important to the policy-making process of public bodies, an open meeting law must include such deliberations within its coverage if the law is to be effective. Valid arguments, however, can be made that the public interest is better served if discussions about certain public matters are held behind closed doors. Despite the validity of such arguments, however, it is not difficult to conclude that some public officials simply prefer private discussions to public deliberations because they find it more convenient and less politically and personally embarrassing to discuss some public matters privately. Only a clear definition of the term "meeting" would prevent these officials from circumventing the law and undercutting the purpose of the law.

D. Notice

To enable the public to exercise its rights under open meeting laws, notice of the time and place for meetings appears to be a necessary provision. Although many states have enacted notice requirements,

103. Id. at 5.
104. Id.
105. See, e.g., Kalil, Is Florida Sunshine the Most Powerful of Disinfectants?, 49 FLA. B.J. 72, 77 (1975) (exception should be allowed for staff meetings because "work product or preliminary deliberations . . . could be more efficiently and effectively accomplished"); Little & Tompkins, supra note 90, at 452, 478 (need to collect data and information on an informal basis justifies certain exclusions from open meeting laws); Markham, Sunshine on the Administrative Process: Wherein Lies the Shade, 28 AD. L. REV. 463, 468 (1976) (officials should be permitted to form policy in private sessions before inviting public comment); cf. Wickham, supra note 5, at 485 (exception for personnel management may be explained by need for efficiency in operation).
106. See Sullivan v. Credit River Township, 299 Minn. 170, 176, 217 N.W.2d 502, 506 (1974) (court refused to "yield" to argument that public officials find closed meetings more practical than open meetings); Markham, supra note 105, at 472-74 (noting that public official who objects to open meetings may "simply be unfit for governmental service").
107. See ALASKA STAT. § 44.62.310(e) (1976) (reasonable notice required); ARIZ. REV. STAT. ANN. § 38-431.02 (Cum. Supp. 1978-1979) (24-hour notice required to be posted at places agency has specified in notice filed with Secretary of State); ARK. STAT. ANN. § 12-2805 (Cum. Supp. 1977) (notice required only for emergency or special meetings); CAL. GOV'T CODE §§ 11125, 54954.1 (West 1966 & Cum. Supp. 1979) (notice required to be mailed to requesting property owners or other persons); COLO. REV. STAT. § 24-6-402(2) (Cum. Supp. 1978) ("full and timely notice to the public" required); DEL. CODE ANN. tit. 29, § 10004(e) (Cum. Supp. 1978) (seven days conspicuous notice at agency's principal office required for regular meetings); HAWAII REV. STAT. § 92-7 (1976) (72-hour public notice required for all regular, special, or rescheduled meetings); IDAHO CODE § 67-2343 (Cum. Supp. 1979) (notice required for all executive sessions and generally for special meetings); ILL. ANN. STAT. ch. 102, § 42.02 (Smith-Hurd Cum. Supp. 1979) (annual filing of schedule for regular meetings required); 24-hour posting at principal office required for
several states, Minnesota among them, neglected to adopt notice provisions in their open meeting laws. The notice requirements that are required by statute in other states range from simple provisions directing that reasonable notice of meetings be given¹⁶ to extensive provisions

special or rescheduled meetings); IND. CODE ANN. § 5-14-1.5-5 (Burns Cum. Supp. 1978) (annual filing of schedule of regular meetings required; 48-hour notice for rescheduled meetings); IOWA CODE ANN. § 28A.4 (West Cum. Supp. 1979-1980) (24-hour reasonable notice of time, place, and date); KAN. STAT. ANN. § 75-4318(b) (Cum. Supp. 1978) (notice to requesting persons); KY. REV. STAT. ANN. §§ 61.820, .825 (Baldwin Cum. Supp. 1978) (regular schedule of meetings required to be set by agency rule; 24-hour notice to requesting persons for special meetings); LA. REV. STAT. ANN. § 42:7 (West Cum. Supp. 1979) (24-hour notice for all meetings unless agency follows regular schedule); MASS. GEN. LAWS ANN. ch. 30A, § 11A½ (West 1979) (48-hour posted notice and filing with Secretary of State); MICH. COMP. LAWS ANN §§ 15.264- .266 (Supp. 1967-1979) (public posting at agency's principal office required); MISS. CODE ANN. § 25-41-13(2) (Cum. Supp. 1978) (agency required to determine procedures for giving notice); MO. ANN. STAT. § 610.020 (Vernon Supp. 1953-1978) (agency required to adopt reasonable methods of giving notice); NEB. REV. STAT. § 84-1411 (1976) ("reasonable advance publicized notice" required); NEV. REV. STAT. § 241.020(2)-(3) (1977) (three working days notice required; minimum notice defined to be posting at public office and three other places); N.H. REV. STAT. ANN. § 91-A:2(II) (Supp. 1977) (24-hour posted notice); N.J. STAT. ANN. § 10:4-9(a) (West 1976) (adequate notice required); N.M. STAT. ANN. § 10-15-1(C) (Cum. Supp. 1979) (agencies to determine reasonable notice annually); N.Y. PUB. OFF. LAW § 99 (McKinney Cum. Supp. 1978-1979) (72-hour notice required for all meetings that are scheduled a week in advance); N.C. GEN. STAT. § 143-318.8 (Supp. 1978) (regular schedule required to be filed; changes require 48-hour notice); OHIO REV. CODE ANN. § 121.22(F) (Page 1978) (public bodies required to establish reasonable methods of giving notice); OKLA. STAT. ANN. tit. 25, §§ 303, 311 (West Cum. Supp. 1978-1979) (regular schedule required to be filed; 10-day notice for any changes); OR. REV. STAT. § 192.640 (1977) (notice "reasonably calculated to give actual notice to interested persons" required); PA. STAT. ANN. tit. 65, § 265(a)-(c) (Purdun Cum. Supp. 1979-1980) (annual public notice by posting and publication required for regular meetings; 24-hour notice for special or rescheduled meetings); R.I. GEN. LAWS § 42-46-6 (1977) (annual posting or posting within 24 hours of meetings required); S.C. CODE § 30-4-80 (Cum. Supp. 1978) (posting at principal office at least 24 hours prior to regular or special meeting and effort to notify media of all meetings required); TENN. CODE ANN. § 8-4403 (Cum. Supp. 1978) (adequate public notice required); TEX. REV. CIV. STAT. ANN. art. 6252-17(3A) (Vernon Cum. Supp. 1978-1979) (72-hour posted notice required); VT. STAT. ANN. tit. 1, § 312(c) (Cum. Supp. 1978) (designation in agency regulations required); VA. CODE § 2.1-343 (1979) (notice to requesting persons required); W. VA. CODE § 6-9A-3 (1979) (agency rule to designate); WIS. STAT. ANN. § 19.84 (West Cum. Supp. 1979-1980) (24-hour notice required); WYO. STAT. § 9-11-104 (1977) (agency must provide for notice by rule).

that detail what the notice must state and where it must be posted.\textsuperscript{109} Several states do not require agencies to give notice of regular meetings\textsuperscript{110} and others waive the requirement for emergency meetings\textsuperscript{111} or merely direct that notice “appropriate to the circumstances” be given.\textsuperscript{112}

Relaxation of notice requirements for emergency meetings may be a disservice to the public. Notice may be more critical for emergency meetings than for regular meetings because of the probable importance of the matters to be discussed.\textsuperscript{113} A better approach than exempting

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\item[(109)] \textit{See, e.g.,} ILL. ANN. STAT. ch. 102, §§ 42.02, .03 (Smith-Hurd Cum. Supp. 1979) (regular meeting schedule required to be prepared; must give 10 days notice for any changes; public notice of special or rescheduled meetings required to be posted at principal office 24 hours in advance of meeting and sent to requesting media); TEX. REV. CIV. STAT. ANN. art. 6252-17(3A) (Vernon Cum. Supp. 1978-1979) (date, hour, place, and subject matter required to be posted in places specified by statute for state agencies, county agencies, and school districts; 72-hour notice required for all meetings except for emergency meetings, when two hours is sufficient).
\item[(110)] \textit{See} ARK. STAT. ANN. § 12-2805 (Cum. Supp. 1977) (notice provision applies only to special or emergency meetings); IDAHO CODE § 67-2343 (Cum. Supp. 1979) (notice required only for executive sessions or special meetings); MO. ANN. STAT. § 610.020 (Vernon Supp. 1953-1978) (no notice required for regular meetings established by agency rule).
\item[(111)] \textit{See} CONNECT. GEN. STAT. ANN. § 1-21 (West Cum. Supp. 1979) (no notice required for emergency meetings, but minutes must be filed with Secretary of State or clerk of county or city); DEL. CODE ANN. tit. 29, § 10004(e)(1) (Cum. Supp. 1978) (no notice required if meeting is “necessary for the immediate preservation of the public peace, health or safety”); IDAHO CODE § 67-2343 (Cum. Supp. 1979); KY. REV. STAT. ANN. § 61.825(2) (Baldwin Cum. Supp. 1978) (if notice is impractical); MASS. GEN. LAWS ANN. ch. 30A, § 11A 1/2 (West 1979); NEB. REV. STAT. § 84-1411(3) (1976) (if necessary); NEV. REV. STAT. § 241.020(2), (4) (1977) (if immediate action required); PA. STAT. ANN. tit. 65, § 265(e) (Purdon Cum. Supp. 1979-1980) (if clear and present danger to life or property); R.I. GEN. LAWS § 42-46-9(c) (1977) (if necessary to public interest); S.C. CODE § 30-4-80(a) (Cum. Supp. 1978); WASH. REV. CODE ANN. § 42.30.080 (1972) (if actual or likely injury to person or property would result); W. VA. CODE § 6-9A-3 (1979) (if “immediate official action” is required).
\item[(113)] \textit{See, e.g.,} Sullivan v. Credit River Township, 299 Minn. 170, 178, 217 N.W.2d 502, 508 (1974) (Yetka, J., concurring specially) (“Matters of extreme importance are as likely,
emergency meetings from notice requirements is to provide a different notice procedure for these meetings. In Arkansas, for example, public agencies are directed to give two hours notice to the media prior to conducting an emergency or special meeting. Some form of special notice for emergency meetings affords the public the opportunity to attend the meetings, in person or through representatives, without infringing upon the responsibility of public officials to respond quickly to emergency situations.

The Minnesota Supreme Court attempted to remedy the Legislature's omission of any notice provisions in the Minnesota Open Meeting Law in *Sullivan v. Credit River Township*. Adequate notice of the time and place for meetings, the court held, was necessarily implied from the terms of the statute. The court left the type and timing of notice to the reasonable discretion of the affected agencies, but did offer some guidelines. First, the court stated that notice of regularly scheduled meetings need not be given if the public can determine the times, dates, and locations through reasonable inquiry. Second, published notice is not essential, even for special meetings, if notice is posted at predesignated locations. Finally, prior notice of all meetings is required unless the meeting qualifies as an emergency. The agencies are free to decide when an emergency is present, subject to the duty to consider "whether indeed perhaps more likely, to come up at emergency meetings than at regular meetings.


116. *See id.* at 174, 217 N.W.2d at 505-06. The court based its conclusion on the general rule of statutory construction that every statute is understood to contain, by implication, those provisions necessary to effect its purposes. *See id.* at 174, 217 N.W.2d at 505. Without a notice provision, the statutory purpose of the Minnesota Open Meeting Law would be meaningless. *See id.* Courts in other states have come to similar conclusions. *See, e.g.*, Barnes v. City of New Haven, 140 Conn. 8, 20, 98 A.2d 523, 529 (1953) (act requiring open meetings of a municipal parking authority required authority to give reasonable notice to the public, although act did not entitle public to participate in discussions); Hough v. Stembridge, 278 So. 2d 288, 291 (Fla. Dist. Ct. App. 1973) (public meeting would not be "public" without necessity of giving notice). *But see* Harms v. Adams, 238 Ga. 186, 232 S.E.2d 61 (1977) (law deals with openness, not notice).

117. *See id.* at 174, 217 N.W.2d at 506.

118. *See id.* Additional notice of adjourned meetings likewise was unnecessary. *See id.*

119. *See id.* at 174-75, 217 N.W.2d at 506. Because "the public [must have] a reasonable opportunity to be aware of the places in which such notices are posted," *id.* at 175, 217 N.W.2d at 506, changing the location for posting notices would require, at the least, notice of the new location posted at the old location.

120. *See id.* at 175, 217 N.W.2d at 506.
the situation calls for immediate action involving the protection of the public peace, health, or safety." 121

The court's guidelines appear to provide the public with sufficient notice of agency meetings. Constructive notice of regular meetings, in the absence of a statutory mandate, is not unreasonable when the agency meets on a set schedule at the same location. Requiring publication of notice for regular or special meetings, the times and locations of which may be determined with little effort, would have imposed an unnecessary expense upon the agencies. As the concurring opinion remarked in Sullivan, however, requiring notice for special meetings but not regular meetings may be inconsistent with the open meeting statute, which applies on its face to every meeting of the affected government bodies. 122 Even less satisfactory is the lack of any notice requirement for emergency meetings. 123 Coupling the discretion to determine when an emergency exists with an absence of any prior notice requirement may tempt some public officials to make sham determinations of emergencies in order to conduct public business privately. 124 Nevertheless, the court's imposition of notice requirements on the open meeting statute filled a void left by the Legislature.

The failure of the court to prescribe notice requirements for all meet-

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121. Id. The court noted that its guidelines were consistent with those adopted by the Minnesota Attorney General. In Op. Minn. Att'y Gen. No. 63a-5 (Jan. 11, 1972), the Minnesota Open Meeting Law was interpreted to require that notice be given to the public of a special meeting of the Faribault City Council. The Attorney General, like the Sullivan court, left the type and timing of notice to the city council and did not require giving notice for emergency meetings. Regularly scheduled meetings were exempt from the notice requirement because "the public would . . . be charged with knowledge thereof without the necessity of additional notice." Id.

The Sullivan court's guidelines for determining when an emergency situation exists are similar to statutory descriptions in other jurisdictions. See, e.g., N.H. REV. STAT. ANN. § 91-A:2(II) (Supp. 1977) (emergency exists when immediate undelayed action is deemed imperative by the agency chairperson); N.C. GEN. STAT. § 143-318.8(b)(3) (Supp. 1978) (emergency exists when "generally unexpected circumstances . . . require immediate consideration"); OKLA. STAT. ANN. tit. 25, § 304(5) (West Cum. Supp. 1978-1979) (emergency exists in situations involving injury to persons or property that would be increased if notice was required before action could be taken).

122. See 299 Minn. at 178, 217 N.W.2d at 508 (Yetka, J., concurring specially).

123. As Justice Yetka observed: "Matters of extreme importance are as likely, indeed perhaps more likely, to come up at emergency meetings than at regular meetings." Id. Thus, no exceptions to the notice requirement were advanced by Justice Yetka. See id. Published notice would be necessary when feasible; otherwise, notice according to "a method selected and incorporated in the bylaws of the public body, which method could vary according to the size of the community and the type of public body involved" should be given to the media was suggested by the Justice. See id.

124. See Note, The Iowa Open Meeting Act: A Lesson in Legislative Ineffectiveness, 62 IOWA L. REV. 1108, 1132-33 (1977) (noting that public officials could use emergency exception without being required to comply with any of the limitations imposed upon other exceptions to open meetings that were designed to limit abuses).
ings of government bodies subject to the Minnesota Open Meeting Law indicates a need for legislative intervention in this area. Although the most recently proposed amendment to the law contained a general notice provision,125 the provision was deleted before final enactment. Nevertheless, the Legislature should consider standardizing the notice requirements set down by the Sullivan court, rather than leaving them within the discretion of the agencies. Furthermore, the Legislature should consider requiring notice, perhaps along the lines of the Arkansas statute, for emergency meetings. Finally, requiring that the notice include the subject matter of meetings would be an improvement upon the Sullivan guidelines.126 With these additions, the Sullivan court’s notice requirements would be strengthened and the Minnesota Open Meeting Law made more effective.

E. Exceptions

Valid arguments for exempting some government bodies and decisions from the open meeting requirement have prompted legislatures and courts to find exceptions from open meeting laws. The most common of these exceptions permits agencies that are involved in the determination of personal rights to conduct proceedings or deliberations in private.127 To protect these rights, discussions among members of parole

125. See 299 Minn. at 178 & n.2, 217 N.W.2d at 508 & n.2 (Yetka, J., concurring specially). The amendment required giving “timely and reasonable notice of all meetings.” Id. at 178 n.2, 217 N.W.2d at 508 n.2 (quoting S.F. 480, 68th Minn. Legis., 1973 Sess.).

126. Several state statutes require disclosure of the subject matter of a meeting as well as its time and place. See, e.g., TEX. REV. CIV. STAT. ANN. art. 6252-17(3A) (Vernon Cum. Supp. 1978-1979); Wis. STAT. ANN. § 19.84(2) (West Cum. Supp. 1979-1980).

127. See ALA. CODE § 13-5-1 (1975) (when “character or good name of a woman or a man is involved”); ALASKA STAT. § 44.62.310(c)(2) (1976) (subjects that tend to prejudice reputation or character of any person); ARK. STAT. ANN. § 12-2805 (Cum. Supp. 1977) (for matters relating to individual employment); CONN. GEN. STAT. ANN. §§ 1-18a(e), -21 (West Cum. Supp. 1979) (matters relating to individual employment); DEL. CODE ANN. tit. 29, § 10004(b)(7)-(8) (Cum. Supp. 1978) (employee or student disciplinary matters); GA. CODE ANN. § 40-3302(f) (Cum. Supp. 1978) (discussions about individual employees); HAWAII REV. STAT. § 92-5(a)(1) (1976) (matters relating to individual employment); IDAHO CODE § 67-2345(1)(b) (Cum. Supp. 1979) (employee or student disciplinary matters); IOWA CODE ANN. § 28A.5(1)(d)-(f), (i) (West Cum. Supp. 1979-1980) (disciplinary matters; employee performance if reputation could be needlessly, irreparably injured; discussions of decisions in contested cases); KAN. STAT. ANN. § 75-4318(a) (Cum. Supp. 1978) (matters relating to students, employees, or patients or residents of public institutions; confidential business data; quasi-judicial deliberations); KY. REV. STAT. ANN. § 61.810(6) (Baldwin Cum. Supp. 1978) (student or employee disciplinary matters); MICH. COMP. LAWS ANN. §§ 15.263(8), .268(a)-(b) (Supp. 1967-1979) (deliberation of merits of certain cases; employee matters and student discipline); MO. ANN. STAT. § 610.025(4) (Vernon Supp. 1953-1978) (discussions of individual’s mental health, scholastic achievement, welfare status, employment opportunities); MONT. CODE ANN. § 2-3-203(2) (1978) (matters relating to individual privacy if privacy exceeds merits of public disclosure); NEB. REV. STAT. § 84-
and pardon boards,\textsuperscript{128} grand\textsuperscript{129} and petit juries,\textsuperscript{130} and the judiciary\textsuperscript{131}


have been excepted from the requirement to meet in public.

In Minnesota, the state board of pardons and the corrections board were expressly excluded from the Minnesota Open Meeting Law. A less specific exception was afforded agencies, boards, and commissions, otherwise subject to the law, "when exercising quasi-judicial functions

detection or prevention); WYO. STAT. § 9-11-105(a)(i) (1977) (investigations of threats to security or rights of public access).


The exception for the judiciary may be constitutionally required. In In re 1976 PA 267, 400 Mich. 660, 255 N.W.2d 635 (1977), the Michigan Supreme Court sua sponte declared that the application of the Michigan Open Meetings Act to the judiciary unconstitutionally infringed upon the separation of powers clause of the state constitution. Legislative intrusion into the administrative or rulemaking powers of the judiciary could not be tolerated.

involving disciplinary proceedings." The latter exception was narrowly drawn. Only when the agency engages in disciplinary proceedings may meetings involving the exercise of quasi-judicial powers be closed to the public. The exception does not permit an agency to meet in private simply because it is engaged in a quasi-judicial activity.

The narrow exception for quasi-judicial activities recognized by the Minnesota law affords sufficient protection of the rights involved. A disciplinary proceeding, if conducted in public, may significantly injure the reputation of the affected party. The Florida Supreme Court, however, was not persuaded that closed sessions were necessary to the proper conduct of disciplinary proceedings. A county school board was required to open its disciplinary proceedings on the ground that, as a part of the legislative branch of government, the school board was subject to the Florida sunshine law, despite the characterization of its activities as quasi-judicial. The Florida Supreme Court's decision appears to emphasize the agency's position in government over the nature of its activities. In Minnesota, however, the law mandates recognition of the activity and not the branch of government to which the agency belongs. Moreover, at least in the limited context of pupil expulsion or teacher dismissal, closed hearings are directed by statute, although the affected pupil or teacher may demand an open hearing. Persons subject to the disciplinary powers of other agencies have no similar right to open hearings under the Minnesota Open Meeting Law. Due process, however,

133. Id.
134. See, e.g., Kalil, supra note 105, at 77 (private sessions to consider employee performance also increases morale); Markham, supra note 105, at 475-78; Wickham, supra note 5, at 485 (noting public has a "persistent fear that reputations can be unfairly maligned during a public investigation").
135. See Canney v. Board of Pub. Instruction, 278 So. 2d 260 (Fla. 1973) (4-3 decision). The issue was whether the school board was required to reach its decision in public, see id. at 262, not whether the board was required to hear the case in public.
136. See id. at 263. A contrary decision, the court stated, would violate the separation of powers doctrine. Id. at 263-64.
137. See Head v. Special School Dist. No. 1, 296 Minn. 267, 276-77, 208 N.W.2d 294, 299-300 (1973) (rejecting argument that determinations of teacher status by a school board are subject to open meeting law; finding clear legislative intent to leave decision to open meeting to teacher involved); Minn. Stat. § 125.17(7) (1978) ("All hearings before the school board shall be private or may be public at the decision of the teacher against whom such charges have been filed."); id. § 127.31(5) ("The hearing shall be closed unless the pupil, parent or guardian requests an open hearing.").
may entitle these persons to an open hearing. The Minnesota law, however, does not require disciplinary proceedings to be conducted in private; it merely exempts them from having to be public. A person subject to discipline therefore is not barred from demanding an open hearing under the law and should be granted the option of a public hearing. A clarifying amendment to the Minnesota law would foreclose controversy on this issue. The exception for quasi-judicial proceedings could be limited to deliberations following the receipt of evidence in public hearings, akin to court proceedings. Impartiality and fairness would be preserved by such a limitation without upsetting the open meeting principle.

Another exception, similar to the quasi-judicial exception, has been found for discussions between public agencies and their attorneys. Twenty-three state statutes contain express recognition of the exception. Four other states have addressed the exception judicially. One


140. See MINN. STAT. § 471.705(1) (1978) ("This section shall not apply to any . . . agency . . . when exercising quasi-judicial functions involving disciplinary proceedings.").


declined to adopt it, but the other three recognized the need for the exception.

Minnesota's law omits a provision recognizing an attorney-client exception to the open meeting requirement. In *Minneapolis Star & Tribune Co. v. Housing & Redevelopment Authority*, the Minnesota Supreme Court judicially adopted the exception. The court ostensibly based its decision on two statutes defining the attorney-client privilege that indicated to the court "a legislative intent to preserve attorney-client confidences." A literal application of these statutes to the open meeting law would have resulted in an absolute exception for all discussions between a public body and its attorney. The *Minneapolis Star* court, however, limited the scope of the exception to discussions concerning pending or prospective litigation. Thus, the exception can be invoked only to discuss litigation matters. Meetings between a public agency and its attorneys in which general legal matters are discussed are not encompassed by the *Minneapolis Star* exception and must be conducted in public.

The Minnesota court's exception for meetings between a public...
agency and its attorneys, by attempting to balance the legitimate interests of the agency with the people's right to be informed, is sufficiently broad to enable agencies to secure legal advice in matters in which privacy in communications is necessary without being so broad as to lead to abuses.

The need of public agencies for privacy has been the basis for other exceptions, such as discussions related to public security. Probably more frequently utilized, however, are exemptions for meetings in which land acquisition or labor contracts are involved. The need for pri-


vacy in these matters is justified by the possibility that the costs of land and labor will be increased if public bodies are required to discuss their strategies in public.\(^{155}\) Persuaded by this reasoning, the Florida Supreme Court held that a public body cannot be required to discuss its economic strategies in public.


155. See Wickham, supra note 5, at 486 (noting that land costs may increase); Effects

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1976) (real estate acquisitions); N.Y. PUB. OFF. LAW § 100(1)(h) (McKinney Cum. Supp. 1978-1979) (only if value would be affected by disclosure); N.C. GEN. STAT. § 143.318.3(a)(1) (Supp. 1978) (real estate acquisitions); OHIO REV. CODE ANN. § 121.22(G)(2) (Page 1978) (if unfair competitive or bargaining advantage would be given to adverse party); OR. REV. STAT. § 192.660(2)(a) (1977) (negotiations); R.I. GEN. LAWS § 42-46-5(a)(3) (1977) (acquisition or lease of real property if disclosure would be detrimental to public interest); S.C. CODE § 30-4-70(a)(2) (Cum. Supp. 1978) (proposed sale or purchase of property); TEX. REV. CIV. STAT. ANN. art. 6252-17(2)(f) (Vernon Cum. Supp. 1978-1979) (if disclosure would be detrimental to government negotiating position); VT. STAT. ANN. tit. 1, § 313(a)(2) (Cum. Supp. 1978) (real estate acquisitions); VA. CODE § 2.1-344(a)(2) (1979) (acquisition or use for public purpose; future plans for state universities if disclosure would affect value); W. VA. CODE § 6-9A-4 (1979) (if disclosure would have adverse effect on financial or other government interest); WIS. STAT. ANN. § 19.85(1)(e) (West Cum. Supp. 1979-1980) (real estate acquisitions); WYO. STAT. § 9-11-105(a)(vii) (1977) (if disclosure would cause increase in price).
Court concluded that labor negotiators hired by a public agency could conduct preliminary contract talks with representatives of a public employee labor organization in private without violating the state open meeting law. On the other hand, open meetings may be necessary to prevent the possibility of collusion between public officers and labor representatives during collective bargaining sessions. Similarly, as one commentator has rather cynically suggested, secret sessions to discuss land acquisition can give public officials the opportunity to cover their corruption. Public discussions of such matters are not harmful, this commentator explained, because persons who profit from public land acquisitions usually find out about pending transactions whether the meetings are open or closed.

In Minnesota, these exceptions are not included in the open meeting law and the supreme court has not judicially recognized them. In *Channel 10, Inc. v. Independent School District No. 709*, the court held that the school board was required to interview prospective employees for administrative positions in open sessions. The absence of a statutory exception, the court stated, indicated that the Legislature had determined that such discussions could not be closed. The court also noted that the absence of a statutory exception for labor negotiations barred public agencies from meeting in private with union representatives for the purpose of collective bargaining.

of the Minnesota Open Meeting Law, *supra* note 36, at 10 (noting that labor costs in 29% of all jurisdictions surveyed increased and in 42% of the larger jurisdictions; also reporting that land costs had not increased as result of the law).

156. *See Basset v. Braddock*, 262 So. 2d 425, 426-28 (Fla. 1972). Holding that collective bargaining sessions need not be open under the state sunshine act, the court remarked: "Such 'intensity' of the 'sunrays' under the statute . . . could cause a damaging 'sunburn' to those employees or to the public which elected the Board." *Id.* at 426. The decision was limited to preliminary discussions—formal adoption of the labor contract was required to be conducted in public. *See id.* at 427. The court also held that private consultations between the body and its hired negotiator could be held without violating the statute. *See id.* at 428. Such consultations were not intended to conceal discussions but to obtain "the best 'bargain' available." *Id.*

157. *Cf. id.* at 431 (Roberts, C.J., dissenting) (bad faith in collective bargaining "emanates from closed doors").


162. *See id.*

163. *Id.* at 324, 215 N.W.2d at 826-27. The court noted that following institution of the
Similarly omitted from the Minnesota statute is a provision excluding political party caucuses. A number of state statutes expressly exclude such gatherings from their laws apparently on the ground that when public officials meet in a party caucus, they meet as private individuals, not as public representatives. The Minnesota Attorney General has pointed out, however, that members of a particular party could caucus as party members to discuss government matters and should be required to meet in public. In such cases, caucuses must be conducted in public.

The limited number of exceptions to the Minnesota Open Meeting Law does ensure that the public will be permitted to attend the discussions of state governmental bodies. Despite statutorily prescribed limitations on the use of closed sessions, however, officials may be tempted to discuss matters beyond the legitimate scope of the private session. If exceptions, such as for land acquisition discussions or labor negotiations, are to be drafted in an open meeting law, safeguards could be included. A greater than majority vote to close meetings could be required. Tape recordings of closed sessions with subsequent disclosure suit, the Legislature had adopted a statute requiring negotiations between public employers and public employees to be conducted in public unless the director of mediation services directs otherwise. See id. at 324 n.9, 215 N.W.2d at 827 n.9; MINN. STAT. § 179.69(2) (1978) ("All negotiations, mediation sessions, and hearings between public employers and public employees or their respective representatives shall be public meetings except when otherwise provided by the director.").

164. See CONN. GEN. STAT. ANN. § 1-18a(b) (West Cum. Supp. 1979) (caucuses excluded even if a quorum of the public body); IND. CODE ANN. § 5-14-1.5-2(c), (h) (Burns Cum. Supp. 1978) (caucuses excluded to discuss political strategy or to prepare for official action); MICH. COMP. LAWS ANN. § 15.268(g) (Supp. 1967-1979) (partisan caucuses of the legislature excluded); N.J. STAT. ANN. § 10:4-7 (West 1976) (political party organizations and caucuses exempt); N.Y. PUB. OFF. LAW § 103(2) (McKinney Cum. Supp. 1978-1979) (political committees, conferences, and caucuses exempt); PA. STAT. ANN. tit. 65, § 267 (Purdon Cum. Supp. 1979-1980) (caucuses exempt); W. VA. CODE § 6-9A-2(4) (1979) (caucuses exempt).


of the tape, minutes, and any relevant documents could be an alternate method of safeguarding against abuses. Any exception, whatever safeguards are provided, must be balanced with the public's need for information and the benefits to be derived from public input into governmental decisionmaking. Without a sufficient reason for an exception, none should be permitted to upset the open meeting principle.

F. Enforcement

Articulating the principle that meetings of government bodies should be open to the public takes less effort than formulating methods of enforcing that idea. One difficulty faced when attempting to design effective enforcement methods is that open meeting laws can be violated with relative ease. Although blatant violations, such as closing formal meetings, are simple to detect and to guard against, less obvious violations may go undiscovered. Seeking to ensure that public officials will comply with open meeting laws, legislatures have adopted various methods of enforcement. The imposition of civil or criminal penalties are a common sanction against violations. Injunctive relief also is


168. See notes 173-76, 187 infra and accompanying text; cf. notes 202-03 infra and accompanying text (listing statutes stating that actions taken in violation of law are void or voidable).

169. See note 175 infra.

made available for possible or continuing violations. A more drastic method of enforcement is provided by statutes that call for the invalidation of actions taken at illegal meetings. The scope of these remedies is discussed below.

I. Actions Against Public Officers—Civil and Criminal Penalties and Removal

The possibility of personal penalties being assessed against public officials who violate open meeting laws may have a significant deterrent effect. Accordingly, many open meeting laws subject individuals guilty of violating the laws to criminal penalties, including fines and jail terms, civil fines, or removal from office.

171. See notes 187-201 infra and accompanying text.
172. See notes 202-20 infra and accompanying text.


175. See Conn. Gen. Stat. Ann. § 1-21i(d) (West Cum. Supp. 1979) (fine of $20 to $500 may be imposed); Iowa Code Ann. § 28A.6(3)(a) (West Cum. Supp. 1979-1980) (court may impose $100 to $500 fine on members who have attended closed sessions unless member voted against meeting in closed session, acted in good faith in supporting closed session, or relied on court or attorney general opinion as authority for closed session); Kan. Stat. Ann. § 75-4320(a) (1977) (fine up to $500 may be imposed for knowing violations); Mich. Comp. Laws Ann. § 15.273(1) (Supp. 1967-1979) (fine up to $500 may be imposed as well as costs and attorney's fees incurred by successful plaintiff); Va. Code § 2.1-346.1 (1979) (fine of $25 to $500 may be imposed for willful violations).
The effectiveness of criminal penalties as an enforcement device in open meeting laws, however, is questionable. Criminal penalties in open meeting laws are seldom, if ever, enforced due to the reluctance of prosecutors to bring charges against fellow politicians,\textsuperscript{177} the difficulty of proving intent to violate what are frequently vague statutes,\textsuperscript{178} and the feeling that open meeting violations are not serious enough to warrant criminal penalties.\textsuperscript{179} In fact, criminal penalties may have a negative effect on open meeting laws by delaying clarification of vague or ambiguous statutes because, fearful of possible exposure to criminal proceedings, public officials are unwilling to test the statutes.\textsuperscript{180} Civil penalties are a more effective method of enforcement because enforcement is not dependent upon prosecutorial discretion.\textsuperscript{181} Removal from office, in one commentator’s opinion, is the most effective sanction against open meeting violations.\textsuperscript{182} Although the public can deal with some open meeting violators through the electoral process, removal provides more immediate relief that is effective against appointed as well as elected officials.

In 1973, the Minnesota Legislature added an enforcement provision to the Minnesota law that imposes civil penalties upon officials who violate the law and requires their removal in certain cases.\textsuperscript{183} Violators may be assessed a civil penalty of up to $100 for each violation, which any person may enforce by bringing an action “in any court of competent jurisdiction where the administrative office of the governing body is located.”\textsuperscript{184} An official who violates the law three times as a member


\textsuperscript{177} See 49 Tex. L. Rev. 764, 773 (1971).

\textsuperscript{178} See Comment, supra note 7, at 1178.

\textsuperscript{179} See id. at 1178-79.

\textsuperscript{180} See Kalil, supra note 105, at 78. In Knight v. Iowa Dist. Court, 269 N.W.2d 430 (Iowa 1978), the Iowa Supreme Court struck down the penal provisions of the Iowa open meeting law as violative of the vagueness doctrine. See id. at 434. The law failed to define the individual conduct that was prohibited; it merely referred to the requirement that meetings of government bodies must be open to the public. See id. at 433. The defendants had been charged with “participation” in a closed meeting, but that conduct was not prohibited by the statute and could be applied not only to members of the public body but also to any witness speaking before the body at the closed meeting. See id. Because it was unclear what type of individual conduct was unlawful under the statute, its penal provisions would not be enforced. See id.


\textsuperscript{182} See Wickham, supra note 5, at 499.

\textsuperscript{183} See Act of May 24, 1973, ch. 680, § 1, 1973 Minn. Laws 1834, 1835 (codified at Minn. Stat. § 471.705(2) (1978)).

\textsuperscript{184} Minn. Stat. § 471.705(2) (1978).
of the same government body may be removed from office and forfeit the right to serve with that body for a period equal to the official's term of office. The statute does not specify the standing or jurisdictional requirements for enforcing the removal provision.

Coupling a civil penalty with a removal provision, as the Minnesota statute does, provides a strong deterrent to official misconduct regarding open meeting laws. Removal from office may be a drastic remedy, but the Minnesota law's requirement of three violations before removal reduces the possibility of unfairness. An official who commits three violations can hardly say that his or her actions were inadvertent.

The practical effect of these enforcement provisions in the Minnesota law is difficult to gauge. No decisions of the Minnesota Supreme Court have discussed their application. Perhaps the absence of case law indicates that the enforcement provisions are deterring violations. On the other hand, the lack of opinions may suggest that the enforcement provisions are perceived to be too weak to be of much value or effect. Other methods of enforcing the law may provide a more effective control:

2. **Injunctive Relief**

Many open meeting laws specify that injunctive relief is available to compel compliance with the law and forestall repeated violations. In

185. See id.

186. The law requires three violations, not convictions, before removal is permitted. Theoretically, a public official could be removed from office without previously having been subject to criminal or civil sanctions; all three violations could be proved in the suit for removal. Moreover, the law does not indicate whether a public official who has technically violated the law but has done so in good faith should be subject to the same sanctions as a public official who has willfully violated the law.

187. See ARIZ. REV. STAT. ANN. § 38-431.04 (1974) (mandamus available if provisions not followed); CAL. GOV'T CODE §§ 11130, 54960 (West Cum. Supp. 1979) (any person may seek injunctive or declaratory relief against actual or threatened violations); DEL. CODE ANN. tit. 29, § 10005 (Cum. Supp. 1978) (any citizen may seek declaratory judgment, writ of mandamus, or other appropriate relief); GA. CODE ANN. § 40-3301(b) (Cum. Supp. 1978) (any citizen may seek injunctive relief); ILL. ANN. STAT. ch. 102, § 43 (Smith-Hurd Cum. Supp. 1979) (injunctive relief available upon probable cause that violation has or will occur); IND. CODE ANN. § 5-14-1.5-7(a) (Burns Cum. Supp. 1978) (any citizen may seek to enjoin threatened or future violations); KAN. STAT. ANN. § 75-4320(a) (1977) (injunction and mandamus are available); KY. REV. STAT. ANN. § 61.845 (Baldwin Cum. Supp. 1978) (any citizen may seek to enforce purposes of law by injunction or other order); LA. REV. STAT. ANN. § 42:10 (West Cum. Supp. 1979) (person denied right to attend meeting may sue to require compliance or to prevent further violations); MASS. GEN. LAWS ANN. ch. 30A, § 11A 1/2 (West 1979) (three or more voters, attorney general, or prosecuting attorneys may seek to require future compliance); MICH. COMP. LAWS ANN. § 15.271 (Supp. 1967-1979) (any person may sue to enjoin further noncompliance with act); MISS. CODE ANN. § 25-41-15 (Cum. Supp. 1978) (any person may seek injunctive relief or mandamus); MO. ANN. STAT. § 610.030 (Vernon Supp. 1953-1978) (injunctive relief available); NEBR. REV. STAT. § 84-1414(3) (Cum. Supp. 1978) (any citizen may sue to require compliance or prevent future violations); NEV. REV. STAT. § 241.040(5) (1977) (person denied rights under act

Published by Mitchell Hamline Open Access, 1979
practice, however, the remedy has been limited by statutes that require proof of a prior violation before an injunction will issue. A Florida court, however, has indicated that injunctive relief would be appropriate upon a strong showing that a violation is about to occur. This lesser standard is more reasonable because, as the Florida court stated, no adequate remedy at law is available for persons aggrieved by violations of open meeting statutes.

Injunctive relief, of course, is of little effect once a violation has occurred, but it can prevent further violations. Furthermore, the threat of holding officials in contempt for failing to obey the injunction should deter violations. Because relief is prospective, injunctions also afford courts an opportunity for clarifying open meeting statutes.

The availability of injunctive relief under the Minnesota law was recognized in Channel 10, Inc. v. Independent School District No. 709.


188. See, e.g., MASS. GEN. LAWS ANN. ch. 30A, § 11A 1/2 (West 1979) (may seek relief to require future compliance with act); MICH. COMP. LAWS ANN. § 15.271 (Supp. 1967-1979) (further noncompliance with act may be enjoined); REV. STAT. § 241.040(5) (1977) (only persons denied rights may seek relief).

189. See Notes Publishing Co. v. Williams, 222 So. 2d 470, 476-77 (Fla. Dist. Ct. App. 1969) (when threat to meet in violation of open meeting law is "real and imminent," injunctive relief is available "since there obviously is no adequate remedy at law"). Statutes in a few states have similar standards. See, e.g., CAL. GOV'T CODE § 54960 (West Cum. Supp. 1979) (injunctive relief available against "actions or threatened future actions"); IND. CODE ANN. § 5-14-1.5-7(a) (Burns Cum. Supp. 1978); WASH. REV. CODE ANN. § 42.30.130 (1972).

190. See 222 So. 2d at 476-77.
191. See Comment, supra note 7, at 1179.
192. See Note, supra note 3, at 1215; Comment, supra note 7, at 1180.
193. See Note, supra note 3, at 1215.
Although other courts have been reluctant to enjoin open meeting violations without statutory authority, the Minnesota court regarded injunctive relief as an appropriate method of effectuating the legislative intent that the statute be enforced, despite the absence of any specific enforcement provisions.

Standing to seek the injunction authorized by the Channel 10 court was not limited to traditional grounds. Injunctive relief usually has been available to vindicate a public interest only when a private plaintiff has suffered or may suffer a personal injury, economic or otherwise, caused by the conduct to be enjoined. The Channel 10 court, however, pointing to the trend toward broadening standing rights, held that a television station and its news director could seek an injunction against a school board's violations of the open meeting law. Although recognizing the station's economic interest in the generation of news, the court based its decision on the implication in the statute that the public has a right to be informed by the media. In dicta, the court acknowledged the public's right to seek injunctive relief based on the public's implicit right to attend meetings of the bodies subject to the law.

The decision in Channel 10 has questionable precedential value because it was rendered prior to enactment of the current enforcement provisions in the law. The court could find these statutory remedies to be exclusive, precluding the availability of injunctive relief. Because injunctive relief provides an immediate method of enforcing the open meeting law, however, it should be available to prevent pending violations. An expedited hearing procedure would ensure that injunctive relief is made available without undue delay. Furthermore, because the costs of obtaining injunctive relief may deter enforcement, an effective open meeting law should contain a provision permitting the assessment of costs and attorney's fees against a violating agency. With these

195. See Note, supra note 3, at 1214.
196. See 298 Minn. at 317-18, 215 N.W.2d at 823.
197. See id. at 312-13, 215 N.W.2d at 820.
198. See id. at 313-14, 215 N.W.2d at 821.
199. See id. at 317-18, 215 N.W.2d at 823.
200. See id.
procedural safeguards, the law would make a firm statement in favor of the open meeting principle.

3. Invalidation of Actions Taken at Closed Sessions

At first glance, invalidating actions taken at meetings held in violation of open meeting laws appears to be a reasonable method of enforcement. Through invalidation, public officials are unable to reap any benefit from their unlawful conduct and the public is not subjected to the consequences of official decisions reached at meetings in which they have had no voice. Several states have included provisions in their open meeting laws stating that actions taken at illegal meetings are void\(^{202}\) or voidable.\(^{203}\)

Application of this remedy, however, encounters many difficulties. First, invalidation is only effective when some action has been taken at
an illegally closed meeting; deliberation cannot be nullified. Secondly, if an invalidation suit is brought, a public body could conceivably stage a "rerun" session in public to moot the suit, although such attempts to validate the illegal action should not be permitted. Third, per se invalidation may lead to the nullification of actions, albeit taken at closed meetings, that are otherwise worthwhile. Finally, the public may have relied on decisions reached in closed meetings before invalidation is ordered. In apparent recognition of public reliance on agency decisions, legislatures have included time limits, ranging from ten days to one year, within which invalidation actions must be commenced.

The Minnesota Open Meeting Law contains no provision authorizing the invalidation of actions adopted at meetings held in violation of the law. Prior to enactment of the enforcement provisions in 1973, the supreme court had addressed the issue of invalidation but without reaching any definite conclusion. In Quast v. Knutson, the court held that an attempted consolidation of a school district was fatally defective because the authorizing resolution was adopted at a school board meet-
ing held outside the territorial confines of the school district. Because the meeting was not a public meeting within the open meeting law, the court held that the actions were invalid. In *Sullivan v. Credit River Township*, however, the court refused to invalidate actions taken at a closed meeting. The court reasoned that because the law failed to provide a method of enforcement, it was a directory rather than a mandatory statute, the violation of which did not result in invalidation. The result in *Sullivan* may have been influenced by the plaintiff's reliance on the actions taken at the unlawful meeting.

Whether the Minnesota court will adhere to these opinions now that the statute contains definite enforcement provisions is uncertain. Invalidation, like notice, however, may be implied from an open meeting law despite the existence of alternate remedies. Courts in other jurisdictions, however, have reached conflicting results on whether invalidation is an implicit remedy. Many courts have refused to order invalidation in the absence of specific statutory authorization. The better result is suggested in an opinion of the Pennsylvania Supreme Court, in which equitable or other appropriate remedies were held to be available under an open meeting law that prescribed a civil fine as the sole penalty for violations. Because invalidation is an effective method of enforcing open meeting legislation, Minnesota should adopt the Pennsylvania approach.

The assessment of criminal or civil penalties, removal of offending officials, and injunctions against continuing violations do not correct the problem for which the remedies in an open meeting law were provided. Invalidation, by cancelling out actions taken at illegal meetings, directly addresses the problem and attempts to correct it by requiring agencies to reconsider these actions in public sessions. Judicial recognition or

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212. See *id.* at 341, 150 N.W.2d at 200. The defect could have been disregarded if a majority of the voters of the district in which the meeting was not held had approved the resolution. *Id.*

213. See *id.*


215. See *id.* at 176-77, 217 N.W.2d at 507. The court did not refer to the Quast opinion.

216. See *id.* at 177-78, 217 N.W.2d at 507 (plaintiff spent $10,000 in reliance on board's grant of sanitary landfill permit).


legislative adoption of the remedy will ensure that actions taken by public officials will be ineffective unless conducted under the public gaze.

III. CONCLUSION

This Note has focused on the Minnesota Open Meeting Law and the interpretations given it by the Minnesota Supreme Court. Although the statute, as presently written, contains some strong features, it could be improved by adopting the changes suggested in this Note.

The extent to which government will be open depends in the final analysis upon the willingness of officials to conduct the public's business in public. This willingness is probably derived as much, if not more, from an official's perception of his or her obligations to the public as from his or her respect for law and fear of its penalties. Open meeting laws are not an instant panacea for government conducted behind closed doors. Nevertheless, to the extent that they influence the conduct of public officials, open meeting laws are the best means that the public has for opening closed doors and keeping them open.