ABSTRACT

OPEN-MEETINGS LEGISLATION:
"SUNSHINE" IN MICHIGAN

By

Carl Larner Parks

Open-meetings laws, which permit the press and members of the general public to attend the proceedings of their elected officials, are a relatively new phenomenon. Such "sunshine" laws, named after Florida's government-in-the-sunshine law, have appeared only since the period following World War II.

While secrecy in government is nothing new, the problem became particularly acute because of the aggrandizement of government at all levels and cold war secrecy measures. Open-meetings laws have been promulgated by those who view statutory provisions as the only method through which remedies to secrecy can be effected. They cite an absence of common law and constitutional guarantees which ensure the right of the public to witness first hand the deliberations of its elected officials.

This thesis is interested in looking at the rationale for opening deliberative processes, examining problems of secrecy in one city government, and finally, exploring the patchwork of Michigan open-meetings laws including a new bill which was signed into law during the 1976 session of the Michigan legislature. Methodology consists of documentary research,

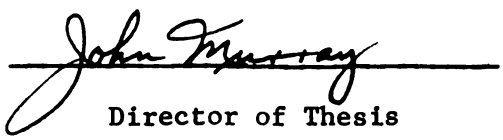
both historical and legal.

Chapter I takes an in-depth look at the theoretical and practical bases for having open-meetings laws. It presents arguments both for and against opening the various deliberative processes of those who set policy and make laws.

Chapter II explores problems of secrecy on the part of elected and appointed officials in the city government of Lansing, Michigan, where open meetings became a campaign issue during the 1975 city council elections. The chapter discusses the efforts by individuals and organizations to open municipal proceedings along with resistance they have encountered. On the basis of these observations, the chapter concludes with reasons why nothing more comprehensive than a piecemeal approach to the problems of secrecy is likely from the local level.

Finally, Chapter III surveys various sources of Michigan open-meetings law and traces the passage of an open-meetings bill through both houses of the Michigan legislature and the governor's office. The new law is then viewed in a side-by-side comparative analysis of existing open-meetings law in Appendix A.

Accepted by the faculty of the School of Journalism, College of Communication Arts, Michigan State University, in partial fulfillment of the requirements for the Master of Arts degree.



Director of Thesis

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Carl Larner Parks

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Dedicated to

MY PARENTS

...without whom, neither I
nor this thesis would have been possible

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PREFACE

No public official likes to be acused of holding "secret meetings" to discuss the public's business. Somehow, the euphamism "executive session" or "work session" seems more "American."

Mention "secret meeting" and somebody is likely to conjure up imagery from somewhere out of the shadowy past when public business translated into patronage. That was the private domain of the political machine.

At one time, perhaps, public officials would meet with ward healers and precinct captains in a hotel room. Or perhaps they would sit around on packing crates in the back room of some condemned warehouse, guarded by a handful of mean-looking goons, far from the public eye.

There, while a hanging, bare light bulb cast dim rays through dense cigar smoke . . .

But wait a minute! Times have changed. Hardly anybody smokes cigars anymore. And a Lansing city board, that once caught flak because its members used to stand around drinking coffee while they chatted in the back room, has members today that don't even drink coffee much anymore. Still, many feel as one Lansing city council member who said that sometimes you have to "close the door and clear the air."

Problems of governmental secrecy were summed up by a circuit court judge when he ruled in favor of a newspaper which had brought suit

against its city council for meeting in closed session:

> Secrecy feeds on secrecy. Supression encourages more suppression. The secrecy that comes about and is advanced by well-meaning men inevitably leads to a scope beyond their original thought.
>
> As Supreme Court Justice Louis Brandeis said: "The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning but without understanding."
>
> By the City Council limiting what can be heard by the public, what can be reported by the news gathering agencies, (there) is a form of government censorship.[1]

Since the dawn of civilization, men have asked (a) "What is the law?" and (b) "Why is it that way?" The "what" was probably first answered some 3,800 years ago when Hammurabi codified Babylonian law.

Only in recent years, however, have the citizens of our representative democracy been awarded benefits of "sunshine" which enable them to transcend vicarious official explanations and discover first-hand why their elected representatives voted as they did.

Each of Michigan's two penninsulas is surrounded on three sides by the Great Lakes. For this reason, Michigan weather offers little sunshine.

Similarly, the political climate of Michigan has not been noted for its "sunshine" either, hence the title of this thesis. Lawmakers cannot do much about the weather, but in Lansing, on both sides of Capitol Avenue, they have tried to legislate a little more "sunshine" in government.

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[1] Boissonneault v. Mason, State of Michigan in the Circuit Court for the County of Genesee, Opinion No. 21123, (1974).

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CHAPTER I

THE OPEN-MEETINGS PRINCIPLE:

Theoretical and Practical Bases

> . . . government by private understanding deprives you of representation, deprives the people of representative institutions. It has got to be put into the heads of legislators that public business is public business.
>
> --Woodrow Wilson[1]

The public's business.--Open-meetings legislation, the subject of this thesis, derives from the tenet that public business, not private business, is what concerns a legislative body in its deliberations. In any government that purports to be democratic, citizens deserve access to more than pro forma sessions of formal "ayes" and "nays." They have an inherent right to the clash of opinion that results in restraints, taxes, and other public matters. They have "a right to know."*

The right to know is best facilitated in an "open government" thus necessitating the distinction between "open government" and "open meetings."

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[1]Woodrow Wilson, The New Freedom (New York: Doubleday, Page & Co., 1913), p. 131.

*The phrase "right to know" was first coined in 1945 by former Associated Press Executive Director Kent Cooper and was attributed to him by the New York Times, Jan. 23, 1945. Vide: Kent Cooper, The Right to Know (New York: Fararr, Strauss & Cudahy, 1958).

In its theoretical, ideal state, the subjects of an open government could not be barred from any official function of their government. At legislative, judicial, and executive levels, they would have full access to both official records and official proceedings. For obvious reasons, however, a completely "open" government is neither practicable nor would it be desirable.

"Open meetings," on the other hand, we will define as public access to legislative proceedings. Thus, open-meetings law does not apply to jury deliberations or staff meetings at the executive level of government. It would, however, apply to legislative assemblies and other public boards which consider and deliberate on behalf of the public as an adjunct of their government.

"Open-meetings" legislation or "sunshine" legislation, so-called because of Florida's government-in-the-sunshine law, presumes that every free citizen in a democracy has the right to know how he will be affected by the decisions of his elected officials. More importantly, it supposes the citizen has the right to know exactly what these decisions are, how they were reached, and how his representatives are voting.

Power and knowledge.--The democratic governments of the United States and the State of Michigan are rooted in the tenet that governmental power not only derives from the people, but that the government *is* the people. For a government to remain the people, as opposed to an elite, the people must be an informed electorate. As James Madison observed:

> Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular

> information or the means of acquiring it, is but a prologue to a farce or a tragedy, or perhaps both.[2]

Similarly, Harold Cross, a former New York Herald Tribune attorney,* stated that:

> 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.[3]

In American society, frequent elections guarantee dynamic change through peaceful evolution rather than destructive change and anarchy which could otherwise occur without them. Given a public right to know, leaders must remain responsive to valid criticism or face defeat at election time. Obviously, valid criticism can only occur when the public is informed.

Thomas Jefferson considered the elections process the "formidible censor of public functionaries," which "by arraigning them at the tribunal of public opinion produces reform peaceably which must otherwise be done by revolution."[4]

In societies without provisions for the frequent change of

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[2]James Madison, "Letter to W. T. Barry, Aug. 4, 1822," The Complete Madison, ed. Saul Padover (New York: Harper & Brothers, 1953), p. 337.

*Cross is a familiar name to anybody concerned with access to government. His pioneering book of the early 1950s, cited infra., The People's Right to Know, serves as a starting point for most freedom of information research even today.

[3]Harold L. Cross, The People's Right to Know: Legal Access to Public Records and Proceedings (Morningside Heights, New York: Columbia University Press, 1953), p. xiii.

[4]Thomas Jefferson, "Letter to Coray, 1823," Democracy, ed. Saul K. Padover (New York: Appleton-Century-Crofts, Inc., 1939), p. 164.

leaders, the right to know may produce change through violent revolution. Thus, sedition and other laws which curtail the flow of information are necessary instruments to save the state. In the words of Alberto Gainza Paz,

> The first act of any dictatorship is to supress freedom of information. If they can't make a frontal attack against the press, they try by insidious ways to capture and restrict that freedom of information. . . . The only way to oppose these evil forces is to defend freedom of information. . . . The defense should not be confined to newspapermen only . . . the public, the people must realize that it is a matter of vital importance for them.[5]

Of course democratic ideals take a back seat to the preservation of the state whenever it is threatened, hence wartime secrecy measures.

In a democracy, legislators and other policy makers are merely individual citizens who act for the whole people. Their power resides with the people who yield it in part only for specified intervals of time. In this spirit, several open-meetings laws contain language in their statements of intent which reaffirm this basic tenet.

Perhaps the best statement of intent is found in the Brown Act, California's open-meetings law:

> In enacting this chapter, the Legislature finds and declares that the public commissions, boards and councils and other public agencies in this state exist to aid in the conduct of the people's business. It is the intent of the law that their actions be taken openly and that their deliberations be conducted openly.
>
> The people of this state do not yield their sovereignty to 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. The people insist on remaining informed

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[5]Cross, loc. cit., p. 14, citing Alberto Gainza Paz.

> so that they may retain control over the instruments they have created.[6]

Similarly, an Indiana statute declares:

> Pursuant to the fundamental philosophy . . . that government is the servant of the people, and not the master of them, it is hereby declared . . . that all of the citizens of this state are . . . at all times entitled to full and complete information regarding the affairs of government and the official acts of those whom the people select to represent them as public officials and employes.[7]

Since legislative power remains with the people as a whole, and they reserve the right to terminate or renew the granting of power, they must be able to go beyond and behind the decisions reached in the legislative process. They must be appraised of the pros and cons involved if they are to make sound judgments on questions of policy and to select their representatives intelligently. Without access to meetings in which decisions are formulated, voters have no means of knowing how wisely or foolishly public business has been conducted.

The free press and the right to know.--The right to know is really a composite of five fundamental rights which embody the freedoms of the press. These are (1) the right to get information; (2) the right to print without prior restraint; (3) the right to print without fear of reprisal not under due process; (4) the right of access to facilities and material essential to communication; and (5) the right to distribute information without interference by government acting under law or by citizens acting in defiance of the law.[8] Journalists

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[6]California, Government Code (1953), sec. 54950.

[7]Indiana, Statutes (1953), sec. 49-3907.

[8]James Russell Wiggins, Freedom or Secrecy (New York: Oxford University Press, 1956), p. 3.

man the front lines in the battle for freedom of information since they, perhaps more than anybody else, seek information first hand.

It must be stressed that the press enjoys no special privilege not shared by the public at large. Even if one chooses not to publish his own newspaper or newsletter he uses these freedoms as a receiver in the communication process.

Of all the five components above, the first, the right to gather information, is the most important element of the right to know. What good, for example, does it do to be able to print, have access to facilities and materials or be able to distribute if one does not have access to information? The freedom of every citizen to get information is merely facilitated by the remaining four components. Despite its importance, however, the right to gather information is probably the most nebulous and least well-defined. At best, it is only implied in the U.S. Constitution and has never been dealt with directly by the U.S. Supreme Court.[9]

The right to receive information means that every citizen should have access to governmental records and proceedings. Theoretically, every individual or special interest representative has the same right to examine documents and attend official proceedings as has the reporter. It could be said that the reporter covers proceedings for the citizen in absentia, because the latter is either unwilling or unable to do so in person.

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[9]See generally Wallace Parks, "The Open Government Principle: Applying the Right to Know Under the Constitution," The George Washington Law Review, XXVI (October, 1957), p. 8.

Thomas Jefferson summed up the role of a free press in a letter to Judge Tyler in 1804:

> Man may be governed by reason and truth. Our first object should therefore be to leave open to him all the avenues to truth. The most effectual hitherto found is the freedom of the press.[10]

While the press may be the most effective means through which information is disseminated, it still has shortcomings which open meetings help to overcome.

First, the press simply cannot be everywhere. There just is not enough manpower available to cover every meeting of every committee. Opening meetings to the general public ensures that information is passed on to others even though only a few interested persons may attend.[11]

Second, the information obtained by attendance from the general public and the media through first-hand observation ensures far more complete information that minutes or other official reports. This point cannot be overemphasized in these times when the press depends for so much of its information on press releases from public relations people.

Third, open meetings ensure more accurate reporting by the press which must otherwise depend on incomplete reports that are slanted according to the views of the informant. Skillful politicians know how to use or manage the press.

Open meetings and community expertise.--Nobody wants a government that is completely run by amateurs. Complex problems of a growing, urban society often seem to call for professional solutions. In seeking

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[10]Thomas Jefferson, "Letter to Judge Tyler, 1804," Democracy, loc. cit.

[11]See Robert A. Dahl, Who Governs? (New Haven: Yale University Press, 1961), pp. 276-86.

solutions, most boards opt for one or more of the following methods. They may (1) ask the city's administrative staff to look into the problem and recommend solutions; (2) hire an outside consultant to study and report; (3) appoint an ad hoc "blue ribbon panel" of "experts;" or (4) encourage citizen participation at the grass-roots level.

Too frequently, however, citizen participation and the democratic town meetings seem old fashioned. These may be treasured heirlooms since everybody likes to pay lip service to democratic ideals. However, some see general participation as outmoded and ill-equipped to deal with complex problems of today's society. In the words of one observer:

> With growing populations, such meetings became unwieldly and with the growing complexity of government functions, many matters seemed to call for expert solution rather than general participation. With the emphasis on "expert solution" more and more meetings began to be held in closed or executive session.[12]

Two fallacies are associated with this modus operandi.

First, the assumptions ignore the fact that today's society is better educated than ever. By opening early planning sessions, public officials enlist the expertise of the whole community. If anyone makes an error in fact or premise, this can be corrected before plans reach an advanced state. Public officials are provided with more accurate information when they elicit participation from individuals, especially on the local level where citizens have the greatest knowledge.

Second, ill-conceived plans are difficult to correct once they have reached an advanced stage. Once minds have been made up, they are more difficult to change than would have been the case if shortcomings

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[12]Judith Murrill Baldwin, "Access Laws: Development," Freedom of Information Center Publication No. 86 (Columbia, Missouri: School of Journalism, University of Missouri, 1962), p. 2.

had been pointed out early in the deliberation process. Once a plan has been unveiled at its final public hearing, the hearing becomes something of a public announcement. It is extremely unlikely that planners will be sent back to the drawing board after officials have pontificated on all the virtues of their ill-conceived plans.

Open meetings and civic consciousness.--In today's experience, one often encounters alienation from people in all segments of society. But after years of living with the old adage "you can't fight city hall," people have begun to organize collectively to improve their quality of life. They are demanding greater participation in their governments.

Neighborhoods are probably the most grass-roots level of any such organizational effort. In the neighborhood organizations, one often hears it said that government should do things for its neighborhoods, not to them. Residents of the various neighborhoods are perhaps the real experts on neighborhood problems. In Lansing, Michigan, for example, neighborhood organizations have become concerned with a wide range of problems including historic preservation, street lighting, parking, adequate sewerage, major flooding, police protection, zoning, prostitution, clearing snow from the alleys etc.

In large measure, neighborhood organizations have sprung up because people were dissatisfied with input to the existing governmental structures. In the following chapter, attempts by one such organization to gain input will be examined.

When government opens its deliberations to citizens, it can become more responsive to the governed because public reaction is ascertained. Lobbyists have enjoyed access to the legislative process for years. Perhaps the citizens should be given that same access.

Furthermore, when citizens are invited to share in the mental exercise of their legislators and begin to understand the demands of government and particular issues, they are better prepared to accept the "public good." Thus, open meetings help to increase compliance with a board's final actions and give them legitimacy.[13]

Protection against wrongdoing.--When meetings are opened to the public, the community is further protected against conflicts of interest and other malfeasance of office. It is more difficult for an individual lawmaker to mislead the majority. It is more difficult for the entire body to engage in misconduct.

Some may argue that it does little good to elect "honest" men to office because "power corrupts and absolute power corrupts absolutely." There is a growing revulsion on the part of the public against irresponsible government. The mass media have directed public attention to inadequacies and abuses of government. "Watergate" and other scandals have shaken popular faith in the governmental process. In the words of former Florida attorney general Baya Harrison III, "in these times, either we're to have a situation of government under glass or government under suspicion."[14] Some have compared open-meetings laws to the locks on doors which keep honest people honest.

Furthermore, honest lawmakers are protected by strong open-meetings laws. It is extremely difficult to accuse a legislator of being "bought" through backroom politics if there are no backroom dealings.

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[13]See generally Wiggins, loc. cit.

[14]Baya Harrison III, Testimony before the Lansing City Council, Jan. 10, 1976.

Protection against fraud and misrepresentation.--Opening our legislative proceedings is somewhat akin to opening judicial proceedings. It is more difficult for a witness to perjure himself if the public is there to contradict falsehoods. This knowledge alone is often enough to check the lies of a witness who might otherwise misstate facts or spin false yarns. Thus, the quality of evidence available to lawmakers is improved.

The right to know v. the right to privacy.--There may be a fine line of demarcation between the public's business and an individual's right to privacy. Public servants live a dual role.

On the one hand, the public has a legitimate concern over matters involving public servants since they affect the orderly conduct of government.

On the other hand, even the public official does not give up all his rights as an individual entitled to privacy when he becomes involved with the public's business. One therefore must ask what is the public's business and at what point does an individual's right to privacy override the public's right to know.

Some favor the closing of sessions involving personnel matters; others do not. On the one hand, some will say that potential applicants are discouraged from applying for a job if they believe word is likely to get back to the employers of their already comfortable position. Others argue that applicants consider the employment change of their own volition, that the public should know in the event of any possible conflict of interest, and that there are always going to be news leaks anyway.

In matters of firing or other disciplinary action, some favor the closing of these deliberations while others favor their being open. Those favoring executive sessions may say that truly frank discussion can only occur in closed session and that they are necessary to the protection of an individual's reputation.

Others say that, by the time a grievance reaches a policymaking body, administrative channels have already been exhausted. They cite open sessions as a means to more complete and factual information, much as judicial proceedings depend on open doors. They say that an individual's reputation is actually protected against innuendo, rumor and false charges.

Perhaps the conflict between rights of the individual to privacy and rights of the public to information rests on some kind of balance. Which is the greatest good?

Few would question that matters involving the moral turpitude of a high, public official merit public scrutiny, but where does one draw the line? Should policemen, firemen, or garbagemen be subject to the same kind of scrutiny as a mayor or city manager? Should a citizen who serves on a board without compensation be subject to the same kind of public scrutiny as an elected councilman who serves with pay?

Under both the present 1968 Michigan law and the new open-meetings law scheduled to take effect in April, 1977, sessions involving personnel matters may be closed. The new law, however, requires a request from the named person.[15]

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[15]Michigan, Enrolled Senate Bill No. 920 (1976), sec. 8a.

Secrecy and the public welfare.--Into this category fall such exceptions to open meetings as the purchase of or lease of real property, strategy and negotiation sessions associated with collective bargaining, and a board's consultation with its attorney.

Some argue these exceptions to open meetings are necessary instruments to protect society from threats both from without and from within.

In real estate matters, for example, some argue that premature publicity drives up prices of properties under consideration. To some degree, their arguments are rooted in factual experience. Those who favor opening real estate deliberations say that speculators and realtors already know of property under consideration and that gag orders merely keep the general public from knowing. Further, they argue that condemnation proceedings can bring price in line with fair market value.

It is interesting to note that closed collective bargaining sessions are the only exception to Florida's attempt at total "sunshine." Here, constitutional considerations were considered to have outweighed the statutory open-meetings considerations.[16] Obviously, collective bargaining is a game and can not work to public advantage if negotiators operate under unequal rules requiring only one side to lay all of its cards on the table. Many of the same considerations apply with respect

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[16]Basset v. Braddock, 262 So.2d (Fla.) 425 (1972): The main question was whether or not collective bargaining sessions with a teacher's union would have to be conducted in public. Recognizing the impossibility of public bargaining, the court concluded that the Florida constitution applied and that an exception to the government-in-the-sunshine law was authorized since Fla. Constitution, art. I, sec. 6 states that "[t]he right of employees, by and through a labor organization, to bargain collectively shall not be denied or abridged."

to attorney-client relationships. In both cases, the public could be taken advantage of financially.

Official investigations may sometimes be conducted in closed sessions to protect the informants. It is extremely unlikely that closing such sessions effects this end, however. On September 26, 1974, for example, employes of the Detroit House of Correction testified before the Michigan House Social Services Committee about conditions which eventually led to a state take-over of the facility. Despite closed doors, this writer discovered all had been fired.[17] Similarly, for reasons discussed on p. 10 supra, some argue that openness in such hearings encourages more honest, factual testimony.

Group concensus.--Often a body of public officials becomes factionalized to the extent that nearly every time a controversial issue occurs, half the members can be expected to vote with one bloc and the other half can be expected to vote with the other bloc. Some view this situation as detrimental to the conduct of the public's business.[18]

At other times, a public body may become so enamored of its own sense of unity that it becomes something of a fraternal organization, acting in its own interest at the expense of the greater society which it should be representing. The result may be decisions reached in private with public sessions being only formal voting sessions, i.e. a re-run of the earlier meeting minus the clash of opinion. This will be discussed to a greater extent in the following chapter.

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[17]The State News (East Lansing, Mich.), December 5, 1975, p.1.

[18]See The State Journal (Lansing, Mich.), August 22, 1976, p. A-1. (Hereinafter, all "State Journal" citations refer to the Lansing, Mich. paper.)

The rise of governmental secrecy.--Some authorities attribute the need for access legislation as a symptom associated with the rise of big government. One, who sees this as beginning with New Deal legislation, writes that

> Only with the development of "big government" in the 1930s and the expanding reach of internal and external security considerations during the post-war period have these tendencies become serious and acute.[19]

Similarly, another views the expansion of government as the sine qua non of secrecy and the resultant access legislation needed to counter it.

> The growth of government, both in power and in service, has been a major reason for this concern with "the people's right to know" what their government is doing. It would seem significant that this high proportion of access legislation has been passed since the advent of "big government."[20]

In contrast to the Washington, D.C. of the 1970s, one former editor of the Eugene, Oregon Register-Guard writes:

> I can remember Washington, D.C. in 1909, when covering Washington was little more of a task than covering a city hall. On nice summer evenings, the Marine Band played in the Plaza in front of the Capitol and President and Mrs. Taft rode by in a carriage and shook hands.[21]

Commenting on the change in his own state, the former editor adds:

> I can remember when all the functions of the State of Oregon were carried on in two relatively small buildings and with a budget of a few million a year. Now they spread through a dozen huge budldings in Salem and Portland with branch offices in every major city, and we budget in hundreds of millions.[22]

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[19]Wallace Parks, loc. cit., p. 11.

[20]Baldwin, loc. cit.

[21]W. M. Tugman, "The People's Right to Know," State Government, XXVII (1954), pp. 225-6.

[22]Ibid.

Similarly, in Lansing, Michigan near the turn of the century, state functions were carried out in two buildings with enough space left over in the capitol for all classes of a women's school. Today, capitol offices have had their ceilings lowered by the addition of second floors that occasionally come crashing down and the former state office building is only one small part of the two huge governmental complexes.

Some say that in smaller communities there is generally less concern with the need for access legislation. One small town editor in California wrote:

> I was born here, grew up with most of the people involved and we enjoy a free and easy exchange of information. I doubt whether our city officials even know of the Brown Act. No problem has come up.[23]

Similarly, in Massachusetts, legislators from cities supported open-meetings legislation while those from small towns opposed it.[24] Scope of operations is no prerequisite for secrecy, however.

School boards, for example, have a notorious reputation for clandestine operations. In the words of Elmer White, recently retired executive secretary of the Michigan Press Association:

> The biggest violators are school boards. They're under the impression they're being efficient with their time.[25]

And Rep. David C. Hollister, D-Lansing, who sponsored an open-meetings

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[23]Albert G. Pickerell and Edward L. Feder, Open Public Meetings of Legislative Bodies: California's Brown Act (Berkely, California: Bureau of Public Administration, University of California at Berkely, 1957), p. 37.

[24]Christian Science Monitor (Boston), Feb. 7, 1957, n.p.

[25]State Journal, April 25, 1976, p. E-2.

bill said: "I defy you to go to a planning commission or zoning board meeting or a school board. They are some of the worst."[26] Hollister offered this explanation for the secrecy:

> It's traditional. It's convenient. These guys don't get paid. It's a hassle. They don't get paid and going public is a hassle they don't want to go through. When they haven't done their homework, they don't want to be embarassed asking a dumb question in public.[27]

Similarly, college and university boards of trustees object to efforts by the legislature to open their proceedings. In the words of Fred L. Mathews, Chairman of the Southwestern Michigan College Board of Trustees:

> . . . (C)ommunity college boards of trustees were created by the Constitution of the State of Michigan and not by the legislature. The legislature has no more right to dictate when we meet, how we meet, and what we discuss than do we to pass rules governing how the legislature performs. The above is true unless we accept the premise that "might makes right."[28]

Mathews discounts closed meetings as a source of public distrust:

> Lack of confidence in government today is not because of local government holding "work sessions." The citizens' lack of confidence is in state and national government because it has gone too far in trodding on the individual rights of the people, including those of locally elected officials. Interference with our right of Freedom of Assembly, when official action is not being taken, is unconstitutional.[29]

At one time, the Michigan State University Board of Trustees was known as one of the most closed governing bodies in the area. Following an

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[26] Ibid.

[27] Ibid.

[28] Letter to Rep. Thomas H. Brown, Chairman Michigan House Towns and Counties Committee from Fred L. Mathews, Chairman Board of Trustees, Southwestern Michigan College, Cherry Grove Road, Dowagiac, Michigan, May 7, 1976.

[29] Ibid.

interview with Blanche Martin, an East Lansing trustee, State Journal reporter Otis White wrote:

> The trustees attended closed meetings called "informational" sessions the night before the public meeting. There, out of view of the public, all the business of the next day's meeting was reviewed and all the meaningful discussion was held.[30]

While meetings of that board have become more open, educators on the whole tend to remain secretive. In Jackson, Michigan, for example, local school board officials met in a member's private home to discuss the closing of an elementary school.[31] In Des Moines, Iowa, female reporters were prevented from covering a school board meeting when male board members adjourned to the men's room to finish their discussion.[32]

Conclusions.--Despite a lack of constitutional guarantees, open-meetings principles are often considered as sacred to the American way of life as provisions in the bill of rights.

Sometimes, however, the right of the public to attend the deliberations of its elected representatives may be tempered because of other, conflicting rights. Arguments to limit the degree of openness taken by a legislative body center around matters of individual reputation and privacy, matters in which premature disclosure could jeopardize the greater whole of society, and one educator has even gone so far as to say open-meetings legislation interferes with his right of freedom of assembly.

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[30]State Journal, loc. cit., p. E-1.

[31]Jackson Citizen Patriot, March 10, 1976, p. 3.

[32]Kurt Rogers and Patricia Murphy, "Access to School Boards," Freedom of Information Center Publication No. 312 (Columbia, Missouri: School of Journalism, University of Missouri, 1973), p. 5: citing The Register (Des Moines), May 4, 1973, n.p.

The right to attend legislative proceedings is important because knowledge is power and an informed electorate is vital to our democratic, representative form of government. The press serves as a vital link in the dissemination of knowledge.

Opening deliberative proceedings increases citizen participation and makes participants more inclined to accept the "public good." Thus, open meetings help legitimize a board's actions.

Furthermore, by opening the deliberative process to the public, legislative bodies are provided with more complete and factual information. There is less chance they will be deceived; it is more difficult for a member of the body to engage in criminal behavior; the body as a whole is discouraged from illegal activity. Charges by the public regarding such behavior are also unlikely if the body has conducted its business openly and above the board.

Open-meetings legislation arose in response to governmental secrecy. Some have attributed the rise in secrecy to the advent of big government during new deal legislation of the 1930s. Some see the degree of secrecy as being directly proportional to governmental size, i.e. the bigger the government, the more secretive it is. Others say the exact opposite is true pointing to the amount of secrecy by school boards.

Specific considerations for the need to legislate open meetings follows in the third chapter dealing with Michigan open-meetings law.

CHAPTER II

PUBLIC MEETINGS IN LANSING, MICHIGAN:

Government in the "Overcast"

A growing propensity toward openness.--Doors, traditionally closed by local custom, have slowly been opening in the city government of Lansing, Michigan.

Sometimes it takes an irate citizen pounding on the door to have it open. Sometimes officials meeting behind the door have to be embarassed by the local news media. At times, the city attorney has to inform officials that they are acting in defiance of the law. At other times, openness happens because persons seeking office make open meetings a campaign issue. Conditions have markedly improved during recent months but there is room for more improvement.

This chapter examines past and current secrecy problems in one city government and explores some of the remedies, both in effect and proposed.

Backroom board meetings.--A group of apprehensive homeowners asked the Lansing, Michigan planning board to reconsider plans that would put a four-lane, divided highway down the middle of their eastside neighborhood.* It was 1972 and a new, expressway-like bridge was already

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*The proposed boulevard would have linked Aurelius Road on the south with Wood Street on the north. The issue was hotly debated and later dropped but some claim it is still alive.

funneling high-speed traffic into what had once been a quiet, residential street.*

Board members listened while homeowners argued that such a road would further the spread of blight and would isolate an elementary school on all sides with heavy traffic.

The board chairman then politely thanked the citizens and members of the board retreated to the back room leaving a startled audience. One schoolteacher, Ms. Jean MacDonald would not put up with it.

"Come out of there," she said pounding on the door.[33] Board members came out and have since become a paragon of openness. It was Jerome R. "Jerry" Lawler's first venture into city government but he was by no means inexperienced in government in general. Currently, Lawler serves as president of the Eastside Neighborhood Organization, a group that has fought for open government and increased citizen participation. Lawler said he was shocked by the board's arrogance toward citizens.

"There is more petty politicking in city hall than there is in the capitol," he said. Lawler should know, since as Administrative Assistant to the Director of the Michigan Legislative Services Bureau, he holds that agency's number two position. His background includes a political science degree from the University of Iowa with his last two years completed in paid, on-the-job-training in Washington, D.C. His worst hassles were with the traffic board, where he encountered a locked door.

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*Clemens Street.

[33]Interview with Jerome R. Lawler, Oct. 4, 1976.

On May 8, 1974, Lawler walked around the North Grand Avenue parking ramp looking for the traffic board meeting. A new man, Raymond O. Severy, was to be interviewed for a job as traffic engineer. All the doors were locked and no meeting notices were posted anywhere. Lawler ran into a group of women from Eureka Street who were also looking for the meeting.

The traffic board had, on April 15, instituted parking changes on Eureka Street without consulting any of the residents. That had resulted in 10 to 12 spaces being wiped out and the women were there to ask the board to rescind the change. Everybody started looking for a telephone so they could find out where the board was meeting.

Lawler pushed on a door marked "employees only" in the northeast corner of the ramp's lower level. It opened into a utility closet. He described the scene:

> There were mops hanging up. Also there was a sink where you rinse the mops and empty the slop pails. We went through there and down a couple of halls looking for a phone. We found the meeting by accident looking for a phone. They were surprised because they weren't expecting any one.[34]

The board chairman advised the women their item of business was not on the agenda and they left. He then asked Lawler if he had been with the women. Since Lawler had come for the interview with the new traffic engineer, he said "no." For about 15 minutes, the Eureka Street parking matter was discussed.[35, 36] Lawler wrote Mayor Gerald Graves.

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[34] Ibid.

[35] Ibid.

[36] Hearing relative to House Bills 5684 and 5405 in the Towns and Counties Committee of the Michigan House of Representatives, Dec. 10, 1975. (Tape Recorded.)

In a 12-page letter, he complained the board had been acting illegally by violating the state's open-meetings law. He also complained the board had been breaking the city charter in three ways: (1) it was putting things into effect before minutes had been published, (2) it had appointed the new traffic engineer after meetings had officially adjourned, and (3) it made 38 decisions without a legal majority present from February to April, 1974.[37]

Lansing City Attorney Peter Houk* agreed with most of Lawler's charges and told the board to meet in public. Houk wrote:

> After some extended discussion, the chairman of the board recommended that the location of the board meetings be changed to the front office of the traffic department to facilitate access to the public.[38]

Lawler remembered that "extended discussion:"

> They went into a closed meeting to discuss whether they should have open meetings. Can you imagine that? Then they had a vote to decide if they would abide by the city attorney's opinion.[39]

Others have encountered suspicious activity by other boards.

On November 18, 1975, Councilman Jim Blair and newly-elected councilmen Dick Baker and Bob Hull went to a meeting of the civic center board only to find a lot of empty seats. Somebody had cancelled the meeting without giving any public notice. They then went to a police board meeting.

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[37]Letter from Jerome R. Lawler, 122 Horton, Lansing, Mich., to Gerald W. Graves, Mayor of Lansing, June 17, 1974. (In the files of the Eastside Neighborhood Organization, 122 Horton, Lansing, Mich.)

*Houk was elected Ingham County Prosecutor in November, 1976.

[38]Letter from City Attorney Peter Houk to Mayor Gerald W. Graves, mayor of Lansing, July 18, 1974.

[39]State Journal, Apr. 25, 1976, p. E-1.

When they arrived at police headquarters, it was 7:45 p.m. and the meeting was to have begun 15 minutes earlier. State Journal reporter Mike Hughes waited with them while board members chatted in the office of the chief of police. When asked what they talked about, Councilman Blair said:

> How the hell do you know what they were talking about? They could be telling dirty jokes with a lady present. They could be talking about the weather. They could be talking about what they were going to do that night. They could be trying to get their shit together, but we didn't accuse them of that.[40]

Blair said that after a big article by Hughes, board members felt as though they had been "set up."

According to the Hughes article,[41] Baker asked police board chairman Russell Lawler what had been discussed in the closed meeting.

"Procedures," he said and added that "we were waiting for one board member to arrive."

"That's right," said board member Richard Rousch. "I'm sorry I was late." He had arrived at 7:34, 11 minutes before the closed session adjourned.

The board thanked the men for showing up and one member made a quick pitch for a new police building. Baker said he was well aware of the need for one. As a former city planner, he had written a report that said current facilities were inadequate. The report advocated no action until police had a clearer idea of what they needed.

There have always been tensions between city council and the various boards. When Blair joined city council in 1973, he found city council had no control over street lighting. That was up to the board of

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[40]Telephone conversation with James Blair, Oct. 8, 1976.

[41]State Journal, November 19, 1975, p. B-2.

water and light.

Later, the North Lansing Community Association had asked city council to provide two beat policemen in the heart of the north side's commercial district. Traditionally, the area has had a disproportionate number of shootings, stabbings, and muggings. Council could only turn the matter over to the police board. According to hotel owner Mary Haney, policemen were merely assigned for a short time and later removed.[42]

The police board has continued abuses of executive sessions. On October 12, 1976, it met in "secret session" not only to consider the suspension of a police officer but to vote and make its decision. State Journal reporter Dan Poorman wrote:

> The Lansing Police Board meeting in secret session Tuesday night apparently handed down a 30-day suspension to Officer Gordon Wilson on charges of conduct unbecoming an officer.
>
> Board Chairman Russel Lawler said today the board's actions are private. He refused to reveal what action was taken, saying only that the board had been in session.
>
> However, sources indicate that Wilson was given a 30-day suspension even though one source said he was found not guilty of the charge. There was no explanation as to how he could be found not guilty and yet still be suspended.[43]

Chairman Russel Lawler justified the board's actions saying it was an "internal matter" for the police department.

The previous week, however, an officer had been suspended for 60 days and placed on two years' probation. There had been no secrecy

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[42]Conversation with Mary Haney, Feb. 10, 1976.

[43]State Journal, October 13, 1976, p. B-3.

order involving that decision.[44]

The board may have been within its legal limits to have called an executive session to discuss specific personnel matters. However, it probably acted in defiance of the current state open-meetings law by not taking its official action in public.

For the most part, closed board meetings are because of traditional practice.

Edward Remick, who had been chairman of the planning board when Ms. MacDonald pounded on the door for them to come out, said that the board met in the back room as "a carryover from the old boards." He insists that his board mostly drank coffee and chatted in the back room, but grants that "we caught some flak for it."[45]

Like the planning board, the board of zoning appeals also used to meet in the back room after hearing from the audience. The practice was dropped after a State Journal article, but Vern Fountain, a city planner, said the meetings were not held to duck the public.

"People would drink coffee and maybe talk about the weather more than anything else," he said. They don't even drink coffee any more.[46] One zoning appeals board member, however, believes frank discussion can only happen if members are insulated from public scrutiny.

> I believe the credibility of board members should be protected to the extent that they should have freedom to question staff people either before the meeting or during the meeting

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[44]Ibid.

[45]State Journal, April 25, 1976, p. E-1.

[46]Ibid.

> regarding the matters in question without parading their ignorance before the public.[47]

Bob Black of the mayor's office said boards have always been open and "all this talk of citizen participation doesn't make any difference one way or the other." He said the public is already represented through the various boards.[48]

Still, the present city charter defines board members as "public officials" and gives them broad powers and often final authority. When the charter was drafted, people were afraid of creating a political machine like that of Mayor Daley in Chicago or Tamany Hall in New York. Mayoral power was somewhat randomly distributed among the various boards to the extent that they are autonomous. They hire and fire department heads, regulate lighting, traffic flow, parking and determine services. A proposed charter would have stripped them of much of their power and would have reduced them primarily to advisory status.[49]

Open meetings but secret agendas.--Jerry Lawler recalls picking up a traffic board agenda at one of their meetings and being told by president Mrs. Pat Guilford to "put that back."[50]

On March 14, 1975 Ms. Jean MacDonald, as Eastside Neighborhood Organization president, wrote city boards asking them for copies of their

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[47]Hearing relative to the Baker-Hull Open Meetings Ordinance, City Council, Lansing, Mich., Feb. 10, 1976. (Tape recorded.)

[48]Interview with Bob Black, Sept. 23, 1976.

[49]City of Lansing, Charter Commission, A Report to the People on the Proposed Charter, Art. 5, sec. 102: The proposed city charter lost in the November, 1976 election.

[50]Lawler interview, loc. cit.

advance agendas. Her letter specified the organization was not requesting background information.

Nine months later, the fire board had not responded. The planning board, in fact, stood alone in saying "yes, no problem."[51]

The parks board responded saying they would be made available only to city officials:

> It was the Board's decision at that time, and reaffirmed in March, the agenda will be made available to all City Councilman (sic) and the City Clerk on the Friday prior to our third Wednesday of each month Board meeting.
>
> In addition to the City Councilman receiving the agenda one is of course also provided to the Park Board member representing your voting ward of the city. From these various sources information may be available on the content of our Board Agenda.[52]

Lyle L. Stephens, chairman of the public service board wrote a refusal saying:

> As I am sure you are aware, the Board of Public Service is not "Government" in the normal sense. All of the Board members are either business people, or employees of business or government, and also residents of the City of Lansing. As such, we Board members share the same concerns and desires about open, effective and responsive government as do you and members of your organization. . . . it would be most advantageous to have a member of your organization attend our meetings in person.[53]

The traffic board declined to send agendas at first with the board chairman saying it would set a "dangerous precedent." City Attorney Houk told the board that sending an agenda was not required but he suggested

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[51]Hearing relative to House Bills 5684 and 5405, loc. cit.

[52]Letter of Douglas Finley to Jean MacDonald, April 9, 1975. (In the files of the Eastside Neighborhood Organization.)

[53]Letter of Lyle L. Stephens to Jean MacDonald, June 5, 1975. (In the files of the Eastside Neighborhood Organization.)

they do. The chairperson voted to send copies "under duress" and another member abstained from voting.[54] Board minutes contain no mention of the meeting with the city attorney.

Problems associated with failure to obtain agendas are obvious. It would be impossible for any citizen group or newspaper to send a representative to every meeting of every city agency or board. Needless time would be wasted monitoring routine business matters which are not relevant or important. Furthermore, if something important were to come up, it would probably be too late to provide meaningful input from proper research.

Lawler said his organization has not yet pressured the parks board for their agendas because helpful employes from the parks and recreation department usually alert them to important matters.

He also mentioned difficulty obtaining reports and studies which had been authorized in public meetings.* Documents, however, are beyond the scope of this thesis.

Another obstacle to attending meetings is the too-helpful employe. Firemen are a good example. Currently, the fire board meets downtown in the city's number one fire station. Blair said:

> First they want to talk with you and that makes it hard to get to the meeting. Then, they want to escort you upstairs so you don't get lost or something.[55]

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[54]Hearing relative to House Bills 5684 and 5405, loc. cit.

* The two studies involved related to flood control and the construction of a fire station. Lawler obtained a copy of the fire site study from a "sweet, gray-haired lady" who did not know it was not to be released. Blair tossed him a copy of the flood study in a hearing.

[55]Blair conversation, loc. cit.

The Lansing City Council: an overview.--Eight nonpartisan council members form the present city council. Four are elected from each of the wards and four are elected at-large. This may change.

Despite a November 2 defeat at the polls, there is a good possibility the proposed charter will be reintroduced at some future time. There is no reason to believe it will be extensively revised.

Under the proposed charter, a ninth councilman would be added. This is seen as a means of breaking stalemates. It would be easier to obtain the two-thirds majorities needed for passage of certain motions. Under terms of the proposed charter, the councilman would be elected at-large. Some, including the Lansing State Journal, oppose this move and say it could cause an imbalance by concentrating several members in a single ward.[56] If Lansing is redistricted following the 1980 census, a fifth ward could be added and the ninth councilman elected from it. This would require a charter amendment, however.

The addition of a ninth councilman would also remove the mayor from legislative activity. Currently, the mayor breaks tie votes.

Under the present strong council-weak mayor system of government, city council carries out administrative as well as legislative functions. Under the proposed charter, this would change. Councilmen could no longer talk with employes about their jobs or tell department heads that a constituent had complained of trash, garbage, weeds or other nuisances. This would all have to be channeled down through the mayor's office.

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[56]State Journal, Oct. 20, 1976, p. A-14.

Legislation is drafted under what is called "the committee system." Instead of individual members submitting resolutions which serve as vehicles of discussion, ideas are kicked around in the three-member standing committees and the city attorney drafts a resolution. The mayor appoints councilmen to the various committees and this is often a source of friction.

While city council passes recommendations from the boards into law, the individual boards, appointed by the mayor under the patronage system, set policy. Many are the final authority for the hiring and firing of department heads. Under the defeated charter proposal, the mayor would have had most of the authority for hiring and firing. Most of the boards would have been reduced primarily to advisory status.

City council, then and now.--City council used to race through its meetings with lightning speed. I can remember back in 1970 when a four or five page agenda frequently took little more than a half hour.

It was hard to tell exactly what council was voting on. The agenda might contain some rather obscure language followed by an account number which identified items of business, but copies of resolutions were not readily available to the public. Before the clerk could even finish her first "whereas," a sponsor would usually move "that the resolution be considered 'read.'"

There was often little discussion or debate on Monday nights because concensus had generally been reached during a warm-up meet earlier in the day.

The public could not address council until after it had already passed that evening's resolutions. Finally, a man named John Eliasohn threatened a lawsuit because he could not speak against a property

purchase deal until after the council had agreed to make it.*

The public has finally been given three chances to speak. Anybody may address any item on the agenda at the beginning of every meeting, any resolution before resolutions are considered, and can talk about anything for five minutes at the end of each meeting.

Back-up material has even been provided for the public. A book of resolutions has now been placed outside the door for public inspection for the first time this year.

Last April, for the first time, council held announced, public budget hearings. They lasted for 17 meetings and took more than 61 hours of deliberation. In the end, council only shifted about $300,000 of the $26.9 million budget.[57]

In October, 1976, council discontinued Monday afternoon committee-of-the-whole sessions on a temporary, trial basis. Ironically, this move has met mixed reactions from those council members who have generally promulgated openness.

Councilman Blair summed up this year's propensity toward openness saying that

> It's an entirely different ballgame now than was being played last year. Now, decisions are made on the floor or at least being discussed there. City government is being run on the council floor, and that never happened in the past.[58]

State Journal reporter, Dan Poorman, who used to cover the city

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* This involved the purchase of the historic Turner-Dodge mansion on the city's north side. While the property was bought with ideas of destroying the mansion and turning the land into a park, civic groups helped with the old home's restoration and are using it for meeting space.

[57] State Journal, Aug. 22, 1976, p. A-3.

[58] Ibid.

hall beat differed saying "they're just not so blatent anymore."

The "old council" v. the "new council."--Most councilmen admit that city council is divided. Much of the split has been over the open-meetings issue. Otis White of the Lansing State Journal wrote:

> . . . the frequent frontal assults on the "secret meetings" of the "old council" quickly embittered an already suspicious older bloc on the council.[59]

Until this year, city council was something of one, big, happy family. Differences were usually ironed out in closed session, beyond the spotlight of public scrutiny. At-large Councilwoman Lucile Belen defended the practice saying:

> I feel that once in a while with a small group of eight people (like the city council), people will be harboring resentments and we need to close the door and clear the air. Do you settle family arguments in front of your mother-in-law? Of course you don't.[60]

In this spirit, she throws a Christmas party for all the council members every year. Members invariably talk shop. Commenting on an open-meetings proposal, Miss Belen said "if you pass this, I couldn't have you guys over for Christmas in my new apartment."[61] Many consider Miss Belen the "old bloc" leader.*

Councilman James Blair, whom many consider to have once been city council's strongest open-meetings advocate, does not go along with the

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[59] Ibid.

[60] State Journal, April 25, 1976, p. E-2.

[61] Ordinances and Contracts Committee of the Lansing City Council, Lansing, Mich., Sept. 23, 1976.

* One can ask just how much air is cleared by closing a door. It is also reasonable to ask if a body of elected officials should be compared to a "family" in its arguments, and the public as an in-law.

idea of private parties for councilmen.

> If seven councilmen get together at the Hotel Olds, make policy decisions, and then come back and pass something, it's just as wrong as a meeting where they throw everybody out.[62]

Blair, who joined council in 1974, was probably the first councilman to accuse his colleagues of "secret meetings."

"We did things on the old council that were close to being against the law," he said, adding some big decisions had been made at private dinner parties. Then, with all the votes already counted and all differences settled, votes would be re-run in public at the Monday night public session.[63]

Together with Dick Baker and Bob Hull, Blair is generally seen as a nearly certain vote for the new bloc. However, he has parted company this year on the implementation of an open-meetings ordinance which would allow virtually no exceptions whatever. Most of the older councilmen deny there is any secrecy problem in city council.

Miss Belen, for example, told State Journal reporter Otis White:

> I don't know where they get this idea of secret meetings. As long as I've been on the council my door has always been open.[64]

Fourth Ward Councilman Jack Gunther said he is "not adverse" to open meetings and added the only time he could remember a closed meeting was in a case involving a personnel matter.[65]

Louis Adado, a one-time, third ward councilman who was reelected

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[62] State Journal, Oct. 28, 1975, p. B-3.

[63] State Journal, Apr. 25, 1976, p. E-1.

[64] State Journal, Aug. 22, 1976, p. A-3.

[65] Interview with Councilman Jack Gunther, Sept. 1, 1976.

last year to an at-large seat said during his campaign:

> We don't have any secret meetings. I remember one (secret meeting) that dealt with a personnel problem . . . We have never asked the press to leave; I don't know what the other candidates are talking about. . . .[66]

When reporter Doug Underwood was covering city hall, he told me that council members would not ask you to leave, but can sometimes appear to be rather uncomfortable. Blair has said members "clam up" with the public there.

Councilman William Brenke has accused Baker and Hull of grandstanding on many issues including open government.

> "When the press leaves and the media leave (a meeting), one councilman leaves too," Brenke said in a not-so-veiled reference to Baker. "You watch next time and see."[67]

He is also disturbed by the time consumption generated by new council members.[68]

City Attorney Peter Houk cited evidence of a real split on council. Last year, his office wrote its 75th official opinion on September 15. This year, the 75th opinion came on July 1. Houk said:

> That situation is generally one that's caused when you have substantial disagreement in the way things are going.[69]

Some favor a return to days when former councilman Joel Ferguson filled a power vacuum, lobbied with other members in private and struck

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[66] The Lansing Star, Oct. 30, 1975, p. 14.

[67] State Journal, loc. cit.

[68] Ibid.

[69] Ibid., p. A-1.

concensuses without a lot of public debate. Miss Belen, for example, said decisions were made more rationally and calmly than they are being made now.

The Ferguson era: 1968-1975.--A master mover and political tactician, Joel Ferguson once told reporter Doug Underwood "nothing happens here unless it goes past me."[70]

When Ferguson served on the city council, city hall was divided. The division, however, was between the mayor and council rather than among council members themselves. Monday night council meetings were sometimes called "the Joel and Gerry fights," because of differences between the two men.

Ferguson, a black man who was elected to city council in the wake of the racial unrest of the 1960s, became a symbol of nearly every action that passed city council during his incumbency. He was effective in maneuvering the four to six vote coalitions needed to pass resolutions. He did this by going to other council members individually, working compromises and making trades. Reflecting on the Ferguson years, Miss Belen said:

> Joel Ferguson thought like we did. He was a liberal but not all the way through. He wouldn't like me saying that, but it's true. He was a businessman, like us.
>
> When Joel was there, he and I could sit down and come up with something acceptable. We're clear thinkers. And they (Baker, Blair, and Hull) aren't quick or clear thinkers.[71]

Ferguson was criticized for his handling of the purchase of an old discount store to be used for recreational purposes. Some critics

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[70]State Journal, Oct. 26, 1975, p. B-1.

[71]State Journal, Aug. 22, 1976, p. A-3.

said the public should be consulted before, not after, a decision is made and that he had pushed through the measure with blinding speed. After some public hearings, opposition developed and the matter was dropped with council changing its original decision.[72]

Mike Hughes said of Ferguson that he was so effective in persuading his fellow councilmen that about the only opposition he ever encountered was from Blair whom many considered something of a maverick. He said that Blair would raise valid objections and the others would just sit there and smile because their minds were already made up.[73]

Ferguson explained his method of operating saying:

> You know the situation around here. If I don't do it while I have people's attention, it never happens.[74]

Rule 49.--Despite claims by the "old council" that they have not held "secret" sessions, facts point to a number of closed and unannounced sessions.

WILX-TV reporter Ray James said, for example, that once he had refused to leave a city council executive session dealing with cable television. According to James, two policemen, one on each arm, dragged him bodily from the room.[75]

In June, 1973 Dan Poorman started covering the city hall beat for the State Journal and found the committee of the whole resolving into "executive sessions on a frequent basis. Poorman said:

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[72]State Journal, Nov. 2, 1975, p. B-3.

[73]Interview with Mike Hughes, Apr. 12, 1976.

[74]State Journal, Oct. 28, 1975, p. B-1.

[75]Conversation with Ray James, reporter for WILX-TV, Nov. 2, 1976.

> I just moved up here from Illinois and they don't allow that sort of thing.[76]

He began describing these sessions as "secret meetings" and also took city council to task for closed meetings after each Monday night session.

"They're executive sessions," Miss Belen said, explaining the meetings had to be closed because they involved "personnel."

"I took them to mean people were involved," Poorman said. "Do we have that many personnel problems in the city?"[77] After a State Journal editorial denounced closed post-meeting council sessions as "secret meetings," the practice was discontinued.

About the same time, Poorman said, the mayor had appointed a salary compensation commission to review pay scales for the city clerk, the mayor and city council. When the committee released its report, many including the press were taken by surprise. Poorman said that although meetings were defended as "open," nobody knew when the committee was meeting or even that they were meeting. He added that Ferguson decried the manner in which the committee had met without public input and killed a pay raise for the mayor. City council also voted down its own $2,500 raise and only the city clerk got one.[78]

By October, 1975, candidates Dick Baker and Bob Hull were making "secret meetings" a political, campaign issue. In response, Miss Belen, as chair of the ordinance and contracts committee, had City Attorney Houk draft a resolution for executive sessions. Language in the document's rationale makes it clear this is no open-meetings rule. Rather, it

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[76]Conversation with Dan Poorman, Oct. 21, 1976.

[77]Ibid.

[78]Ibid.

defends the Lansing City Council's use of "executive" sessions.

> Whereas, from time to time the City Council, out of necessity has been required to resolve itself into executive session and to limit attendance . . . and
>
> Whereas, the Council has never had a clearly set policy of use of such sessions, but has generally limited them to matters of real estate, personnel and pending litigation; and
>
> Whereas, the Council has from time to time been severely criticized for the use of such sessions because their use has been misunderstood . . .[79]

Rule 49 permitted the maximum use of executive sessions as determined by the courts in Boissonneault v. Flint City Council.[80] It added procedural guidelines and tailored the first exemption to include appeals under the city's employe grievance system. It states:

> The Council shall meet in Executive Session only for the following purposes: (1) to consider the employment and appointment, dismissal, suspension, or disciplining of any one of the appointed officials who serve at the pleasure of the Council, and to consider employee grievances unless the employee requests a public hearing; (2) to consider the appointment or removal of citizens to City Boards and Commissions, provided however, if a decision is reached to remove such an official said official shall have a right upon request to have a public hearing; (3) to discuss strategy sessions and interim reports with respect to collective bargaining or potential or pending litigation; (4) to consider preliminary negotiations involving the purchase or sale of property, both real and personal, but not involving services or the acquisition thereof, except as provided hereinabove; (5) to consider records which are specifically exempt by law from public inspection; (6) to consider severe threats or (sic) riot or insurrection, public knowledge of which, in the opinion of the City Council, would be detrimental to efforts to meet or lessen the threat. (Emphasis added.)[81]

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[79]City of Lansing, Michigan, Council Proceedings, Oct. 27, 1975, pp. 921-922.

[80]Glen A. Boissonneault and Booth Newspapers, Inc., A Michigan Corporation doing business as THE FLINT JOURNAL, v. Carl Mason, Woody Etherly, Gerald Yurk, Fred Tucker, John Northrup, Doublas Philpott, Francis Limmer and Edward Little, 392 Mich. 685; 225 N.W.2d 519 (1974): hereinafter cited as Boissonneault v. Mason.

[81]Council Proceedings, loc. cit.

The rule allows the mayor, mayor pro-tempore or any two councilmen to request an executive session. City council may resolve into or adjourn from an executive session by a simple, majority vote. All votes must be taken in a public meeting open to all citizens.[82]

At its passage on October 27, 1975, the resolution was considered without a public reading. Blair complained he had not been given a copy until that afternoon and had not had a chance to study it thoroughly. He said that a perfunctory reading during supper had raised many questions, adding "I really feel this is a half attempt at open meetings."[83]

He puzzled over definitions of "council," and asked if that meant "official meetings" or "unofficial meetings when more than a quorum" is present. He asked if "council" was to mean council committees including the committee of the whole.

He asked for time to compare the rule with the open-meetings laws of other communities and took issue with its lack of penalty provisions.

Miss Belen accused Blair of not doing his homework and said it contained the same language as a city attorney opinion which he had received a week earlier.[84]

Councilman John Anas responded by saying there had been no secret meetings.

> Mr. Blair has been with us now almost two years. I can't remember too many meetings where we have attempted to have a so-called closed session. And prior to that time we've had very few so-called "executive" sessions. Sometimes they're referred to as

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[82] Ibid.

[83] Lansing City Council, Oct. 27, 1975. (Tape Recorded.)

[84] Ibid.

> "secret meetings," incorrectly, because I defy anybody in this city to have a so-called "secret meeting" and get away with it. There's just no such animal.[85]

Councilman Joel Ferguson took a jab at Blair, who had become increasingly open in his support of candidate Dick Baker.

> I almost agree with Mr. Anas. I think Mr. Blair has been here in the council for two years although he hasn't been with us. I might think that it's just totally impossible to have a secret meeting with Mr. Blair here. I don't know why he keeps beating us over the head saying that we've had secret meetings, because that has not been the thing that has happened.
>
> We've had some meetings where, in error, we could have expanded on a subject longer than we should have, but the council has never intentionally had secret meetings to do the city's business.[86]

Ferguson moved to the question and Blair cast a dissenting vote. Then, with the question on the motion, Blair misspoke himself, first saying "aye," then shouting an emphatic "no." A large crowd from North Lansing had gathered for another measure and many chuckled. Rule 49 passed 7 to 1.

A full transcript of discussion relating to the passage of Rule 49 has been included in Appendix C.

Secrecy charges by Mayor Graves.--Immediately following Rule 49's passage, Mayor Graves accused Ferguson and other council members of holding numerous secret meetings including one in which they had allegedly conspired with the local news media to hire a private detective agency to investigate his background. He further charged the detective agency was paid from the public till.

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[85] Ibid.

[86] Ibid.

> I will say that Councilman Ferguson made a tremendous story of no secret meetings when he knows it's not fact and I know it's not fact.
>
> Councilman Ferguson, you've been at meetings that we haven't even been invited to. And for you to sit here and say there have been no secret meetings is an untruth. And I'll ask you if you were at the meeting when members of this body, when I was first elected, hired a private detective agency to look into my background with help from a TV station and a newspaper. And this council, the night I took office, paid the bill. Were you at the meeting?[87]

Both Ferguson and Miss Belen responded saying "I'm not aware of such a meeting." Graves said the matter should come out in Federal Communications Commission hearings on WJIM, then in progress, and added:

> Well, I think Mr. Blair is on the right track because I haven't been at meetings or even been notified of some meetings. And I think that charter says the mayor is a member of every board and every committee.
>
> I've been notified some days the same day of the meeting; I've been notified after we've been here and nobody showed up that the council committee has been changed to some other location. And I don't look kindly on it.[88]

Ferguson denied the charges and accused the mayor of operating like Sen. Joe McCarthy.[89]

About a year later, Councilman Gunther said he could remember no such meeting but said there may have been some talk on a one-to-one basis.[90]

Bob Black of the mayor's office said in fact a check had been made out to Pinkerton's of Grand Rapids.[91]

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[87] Ibid.

[88] Ibid.

[89] See State Journal, Oct. 28, 1975, p. B-1.

[90] Gunther interview, loc. cit.

[91] Black interview, loc. cit.

Councilman Baker said he heard both the cancelled check and a Xerox copy of it had mysteriously disappeared.[92]

The mayor has not been available for comment.[93]

Open meetings: a campaign issue.--Rep. David C. Hollister, D-Lansing, is considered a "people's candidate." His legislative style is one of involving as many citizens in the legislative process as possible. Apparently that works; in the 1974 August primary election he defeated four opponents and went on to win in November. There is little doubt his campaign inspired those of Dick Baker and Bob Hull.

All have played a vital role in open-meetings legislation. As part of a 13-member citizen's task force, Baker helped Hollister draft House Bill 5684. This open meetings bill was Hollister's first piece of legislation.

Baker and Hull introduced virtually the same document in the Lansing city council as part of a campaign promise. Ironically, Hull was formerly an aide to Sen. Daniel S. Cooper, D-Oak Park. Cooper was responsible for a number of crippling amendments to Senate Bill 920 which had been introduced by Sen. David Plawecki, D-Dearborn Heights. That bill was recently signed into law without the weakening amendments.

Throughout his 1975 campaign, Baker charged that there is a "closed meeting process at city hall."[94] He said councilmen feel they are a "fraternity" and do not encourage public input. As a result, he said,

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[92]Interview with Dick Baker, Sept. 1, 1976.

[93]Letter from Hon. Gerald W. Graves, Mayor of Lansing, Apr. 22, 1976.

[94]State Journal, Oct. 26, 1975.

public hearings were more often public announcements. He cited three examples in which city council had reached major decisions in closed sessions.

First, the decision to put the charter commission issue to a vote of the people came at the end of a closed meeting to discuss Mayor Graves's appointments to the Community Development Board.

Second, the decision to go with a city-wide trash pick-up program came in a closed budget hearing.

Third, the city council standing committees kept no agendas or minutes.[95]

Baker also hit on board appointments being decided in closed session.

> Board appointments are discussed in private. Anything important is discussed in private and then, after the private discussions they vote in public. They ought to do public business in public.[96]

He also objected to administrative secrecy in which $29 million worth of community development fund priorities were determined in meetings scheduled at the Oak Park Country Club.[97]

Baker, 34, had been the center of a furor last year when he was laid off--some, including Baker, say fired--from a job with the city planning department. He claimed he had been fired for speaking out publicly on a school controversy. Baker started campaigning and ran an issues-oriented campaign.

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[95] The Lansing Star, loc. cit., p. 10.

[96] Ibid.

[97] Ibid.

His opponents complained he had been overemotional on the open-meetings issue. He had heated debates with Ferguson, for example, and candidate Joe Gall said that Baker had an anti-city hall attitude that erodes people's confidence in their government.[98]

"If Oldsmobile had to have all its meetings open," Gall said, "it would never get anything done." He carried a briefcase with a sign warning that there was "secret stuff inside."[99]

At the center of Baker's campaign was the attitude that residents are the real experts on their own neighborhoods. To facilitate their input, open meetings were needed.

Like Baker, Hull also ran a very issue-oriented campaign in the city's first ward on the east side of Lansing. Hull defeated the incumbent Roger T. May whose literature concentrated on "meet the man" rather than issues. May also boycotted Eastside Neighborhood Organization activities and refused to fill out a questionaire for their paper.[100]

"May made the tactical mistake we were out to get him," said organization president Jerry Lawler. "We have never endorsed a candidate yet we have the reputation of being political." He added that the organization forces a candidate to take a stand on issues. While the organization may not have endorsed Hull, Lawler admits that Hull's campaign was run out of his home which is also listed as the organization address.[101]

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[98]State Journal, Oct. 26, 1975, p. B-5.

[99]State Journal, Apr. 25, 1976, p. E-1.

[100]State Journal, Nov. 2, 1975, p. B-3.

[101]Lawler interview, loc. cit.

Like May, Ferguson also ran a campaign which was not issue-oriented. This is surprising since he had hired the public relations firm of Jones and Such to conduct a public opinion survey to identify the issues.

It is unlikely that, after eight years on the city council, Ferguson would have required an issue-identifying poll, unless it stressed the need to play up name identification. One radio spot, for example, merely stressed the spelling of his name.[102]

The Baker-Hull open meetings proposal.--True to his earlier campaign promise, Baker introduced an open-meetings resolution shortly after he was sworn into office in January, 1976. As mentioned at p. 42 supra, the document was a sister to House Bill 5684 which had been introduced to the Michigan House of Representatives by Rep. David C. Hollister, D-Lansing, on October 22, 1975. While Hollister introduced and sponsored the bill, he had taken a back seat to its drafting.

In late 1975 a group of 13 concerned citizens began meeting every other Saturday to draft a model piece of open-meetings legislation. Activities had been coordinated by Hollister's wife Judy and task force members represented a broad spectrum of society.

In addition to Baker* were two active Common Cause members acting on their own behalf. They were Mark Cory and Leslie Lokken. Mrs. Lokken has also been very active in the women's caucus of the Ingham County Democratic Party. Her husband, George, is a retired national guard

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[102] State Journal, Nov. 2, 1975, p. B-3.

* Bob Hull had not yet joined the task force.

adviser now employed by the Lansing City Council as program coordinator. Some have considered him a potential mayoral candidate.

Two newsmen, Ray James of WILX-TV and Doug Underwood of the Lansing State Journal, now with the Gannet Washington bureau, also participated in a very low-key manner.

James Clock, president of the Waverly School Board played a vital role on the task force. Earlier, Clock had become so concerned with the closed "work sessions" of his own school board, he introduced an open-meetings resolution. In the end, he had to vote against his own resolution because amendments by other members would have permitted an even greater degree of secrecy.[103]

Baker kicked off the resolution in city council with considerably more fanfare than is usually afforded resolutions in that body.

He abandoned part of his 1960s-style liberal image which had usually depicted him wearing the same, funny hat throughout most of his campaign literature. He had also irritated some by plunking down cross-legged on the floor of council prior to his election.[104]

First, he held a press conference, almost unheard of in the Lansing City Council and, in the words reporter Mike Hughes:

> He arrived looking his TV best--white turtleneck sweater, blue shirt, and brown sweater--and gave the ordinance a strong sell.[105]

The press conference was held February 6 and drew a gaggle of reporters.

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[103]Hearing relative to House Bills 5684 and 5405, loc. cit.

[104]State Journal, Oct. 30, 1975, p. B-2.

[105]State Journal, Feb. 6, 1976, p. B-3.

In addition to Hughes were two television camera crews and four radio newsmen. Baker said there was great distrust of government now and that openness starts to restore some of that trust. He added: "I believe we're the only city in the state that is considering an open-meeting ordinance."[106]

Actually, Detroit has had a tough open-meetings ordinance for some time but House Towns and Counties Committee aide Neil Krentzin says it is not enforced.[107] Baker also announced an upcoming hearing slated for the following week.

The February 10 hearing featured Baya Harrison III, whom Mark Cory had worked to bring to Michigan from Florida. Now an attorney in private practice, Harrison had formerly been the number two man in Florida's attorney general office despite his young age of 33. That job put him in charge of enforcing that state's government-in-the-sunshine law, a landmark piece of legislation.

In addition to stumping for the Baker-Hull resolution, Harrison also met with newsmen in Detroit, Flint, and Kalamazoo, attending a Kalamazoo hearing later in the day for House Bill 5684.

The State Journal gave editorial support to the ordinance and urged people to attend the hearing.

> Political campaign pledges are too often like the leaves of autumn--beautiful in their fall glory but soon blown away by the chill wind of winter and forgotten.
>
> But there are some exceptions, and we're happy that new Lansing councilmen Dick Baker and Robert Hull are pursuing the subject of open meetings.

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[106] Ibid.

[107] Interview with Neil Krentzin, Michigan House Towns and Counties Committee aide, Sept. 28, 1976.

> . . . It aims at one of the most persistent complaints about government at all levels--the practice of government officials sitting down in informal sessions, reaching concensus on various issues, and then finalizing those views later at a public meeting with little or no open conversation about how the decision was reached.
>
> . . . The Baker-Hull proposal is refreshing because it puts the spotlight on the need for more openness in government--something long overdue.
>
> We hope council members and the public will give the matter serious study.[108]

To Harrison, open meetings are a fact of everyday life. At a pre-hearing dinner at Jim's Tiffany Lounge, he put it simply. "How can you-all be against open meetings? How can anybody be against open meetings?[109] Harrison wore a well-tailored, vested suit and maintained a low-key aura of Southern Charm.

"If you-all pass a good sunshine law," Harrison told people gathered for the hearing, "your credibility is going to go up eight points. If you-all pass a good sunshine law, people are going to think you're good folks. When they see you together, they're not going to figure you're cutting a deal."

Harrison said his approach to open meetings was not philosophical "because I am not as philosophical a person as Mr. Hollister." He continued "I just want to assure you in a very calm way that we shouldn't have any fear or serious concern about the adoption of a sunshine law for this reason--it works." He described the climate of Florida government.

> Whether we're talking about the pomp and circumstance of a state cabinet meeting in Tallahassee, with all the flags and little glasses of orange juice on the table, or whether we're talking

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[108] State Journal, Feb. 10, 1976, p. A-6.

[109] Baya Harrison III, dinner conversation, Feb. 10, 1976.

> about the good folks down in Lacoochee, Florida and their meetings down there to talk about their crops and whether or not they're going to plant in April or May, every day in Florida there are hundreds of board meetings.
>
> They meet in the sunshine. The discussions take place with the public present and life goes on. We're able to conduct this in a very efficient way.*
>
> We have, I think, excellent citizen participation. There's a real feeling in Florida that people are a part of their local and state governments.[110]

Harrison testified that thanks to his state's sunshine law, it was harder for public officials to turn their office into personal gain. He mentioned that several high officials had been convicted on bribery charges after information from open meetings proved money was not campaign contributions as had originally been claimed by them.

Councilman Belen said that every time she went to Florida, she was appalled by the number of corrupt officials being indicted. She disagreed with Harrison's comments that that was a result of sunshine laws.

"We're more honest up here," she said, leaving early.[111]

The resolution caught some flak because of provisions which would require meetings of one-half a quorum to go open. Since most of the standing council committees are made up of three members, two persons could not discuss committee business if they served on the same committee unless it were done in a public meeting.

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* Later at a party, Harrison described how business meetings in Florida were more efficient. He said that we "yankees" are too long-winded, that in his state, a chairman never hesitates to tell somebody to "sit down and shut up."

[110] Hearing relative to Baker-Hull proposal, loc. cit.

[111] Ibid.

Blair, whom some had seen as a third vote in passage of the resolution, said that while he supported about "99 and 44/100 per cent of it," he would be afraid of "innuendo" and "guilt by association" charges that might arise from purely social visits with other council members.[112] The previous week, he had voiced objections to the half-quorum provision.

"If you did this," he said, "then three of us couldn't even get together to plan strategy. We couldn't even talk about what we were going to do to try to pass a resolution. . . . I couldn't even go down the hall to talk to Bob Hull, because we're on a committee together."[113]

Councilman Adado expressed reservations saying the penalties section was "serious business" that could have a far-reaching affect on future council members.[114] Most of the public supported the resolution.

"I believe a major reason why some members of public bodies oppose open meetings is because they confuse the best interest of the public body with the best interest of the public," James R. Clock said. He described his own experience as president of the Waverly School Board.

"The public knows when it is being played to and when distortions are present," he said adding that the people of Lansing deserve openness and sunshine. Clock said these would increase public confidence and integrity in matters concerning the board. Parents would know why programs were added, dropped or modified.

Mark Cory spoke of a widening gulf between public officials and the citizens who are supposed to be represented. According to Cory, open

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[112]Interview with Councilman James Blair, Feb. 10, 1976.

[113]State Journal, Feb. 6, 1976, p. B-3.

[114]Hearing, loc. cit.

meetings are one way to narrow the gulf and increase the credibility of public officials.

Rep. David Hollister spoke for the proposed ordinance and its lack of exceptions to open meetings.

"Anyone who thinks public confidence is at an all-time high simply doesn't understand the mood of the country," he said adding the only way to overcome that was with a good "dose of democracy."

One Jim Booth of Lansing said that the participation process could only work if persons shared with the reasoning that goes into decisions.

An Arturo Gonzalez said that more Latinos and Chicanos were becoming involved since community agencies opened meetings allowing greater participation.

Speaking against the resolution were Mrs. Lucile Amon of the board of zoning appeals and James Nelson. Nelson, who had opposed Baker during the Vivian Riddle school controversey accused Baker and Hull of having their own secret meeting at one point during the hearing when Baker got up to whisper something to Hull.

"It seems to me that the authors were overcome by their own rhetoric and in their zeal to keep anyone from saying anything without their knowledge, they brought forth a monster that will do more damage to the city's development and management than any good that can come to it. He said that the caucus between Baker and Hull could have been grounds for incarceration and spoke to the penalties section.

"How does one prove the charges?" he asked. "How many of your board members, serving without pay, will want to be spied on?" He suggested a "simple ordinance requiring modified public meetings be held

openly and added to that a real solid conflict-of-interest law.

Mrs. Amon, whose comments were quoted at pp. 25 and 26 supra, said that while she was a "champion of the people's right to know, that right had to be tempered with good judgement." She said the learning process of public officials is hampered if they have to "parade their ignorance in public."

The city attorney opinion.--City Attorney Peter Houk is regarded by some as being a strong open-meetings advocate. However, his opinion of the Baker-Hull open-meetings proposal exposes many flaws in the document. Some of these were mentioned by Neil Krentzin in regard to the identical House Bill 5684. Krentzin said that the bill should have been written by the Legislative Services Bureau instead of a citizen's task force and would have required extensive revision if it were to have been introduced to the floor of the House. In the event Senate Bill 920 had failed, House Bill 5684 probably would have been introduced.[115] From a legal point of view, most of Houk's objections to the Baker-Hull open-meetings proposal apply to both documents.

The opinion, dated March 9, 1976 was supplied at the request of Miss Belen as chairman of the ordinances and contracts committee of the Lansing City Council. In opening, Houk cited the need for such a law but took issue with the resolution in its present form.

Houk commended the ordinance for ensuring that public business is conducted in the public, ensuring that all are equally informed and for discouraging unethical conduct by elected and appointed officials. This, he said, could lead to a renewed faith in our governmental process.

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[115]Krentzin interview, loc. cit.

He also said an ordinance of this type would probably encourage citizen participation because of increased citizen awareness, would result in greater governmental efficacy since meetings might become a "market place of ideas," and would enable citizens to better select qualified leaders and vote intelligently on ballot issues.[116]

However, he took issue with the statement of intent which had been borrowed directly from California's Brown Act.[117] That statement of intent reads as follows:

> Sec. 2-106. Intent. It shall be the policy of the City of Lansing that:
> (a) Public bodies exist solely to serve the public.
> (b) It is the intent of this ordinance that actions of a public body be taken openly and that their deliberations be conducted openly.
> (c) The people of this City do not yield their sovereignty to the public bodies which serve them.
> (d) The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for the people to know.
> (e) The people's right to remain informed shall be protected so that they may retain control over the instruments they have created.[118]

Of these provisions, Houk said only (b) and perhaps (e) speak to intent. Other sections add nothing substantive and should be stricken.[119]

Second, he said "the ordinance becomes ensnared in its own definitions and the outcome is only confusion." For example, the heart of the document is "(a) meeting of a public body shall be open," but in

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[116]City of Lansing Interoffice Communication from Peter D. Houk, City Attorney, to Lucile Belen, Chairman of the Ordinances and Contracts Committee, Lansing City Council, Mar. 9, 1976.

[117]California, Government Code (1953), sec. 54950.

[118]City of Lansing, Michigan, Proposed Open Meeting Ordinance (introduced Jan., 1976 by Councilmen Baker and Hull), sec. 2-106.

order to find out just what that means, the definitions section must be consulted to find the meaning of "meeting," "public body," and "open." Even after consulting the definitions, there is further need to consult additional definitions.

For example, "prior notice" is a component of "open" and includes a "posting" requirement. To find out what that means, the definition of "posted" must be consulted.[119]

Houk also took issue with Sec. 2-109 which declares null and void any action taken in violation of the ordinance. He said it

> . . . represents an easy invitation for anyone opposed to any particular Council action to institute suit in Circuit Court, obtain a temporary restraining order alleging violation of the ordinance, and thereby effectively forestall the Council's action while the case is pending in the Court.[120]

Houk took issue with the penalties section which makes it a misdemeanor for any member of the public body to participate in a meeting held contrary to the ordinance. He said the element of knowing violations should be added. He also cited the need to employ outside counsel to prosecute or defend any such action to avoid any conflict of interest.

While the city attorney may have found serious objections to the two enforcement provisions of the proposed ordinance, legal research has clearly demonstrated neither method is effective.

Examples from both Iowa and Massachusetts demonstrate the shortcomings of nullification. In Dobrovolny v. Reinhardt,[121] plaintiffs had

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[119]Interoffice Communication, loc. cit.

[120]Ibid.

[121]Dobrovolny v. Reinhardt, 173 N.W.2d 837 (Iowa 1969).

sought an injunction forbidding implementation of a school board decision which had split the district and consolidated the fragments into two other districts. The board's decision had been made at a meeting for which no public notice had been given despite such provisions in Iowa's open meetings act.[122] Despite the fact that a majority of the Iowa supreme court conceded a violation, nullification was not seen as any remedy to the school board's action.

Furthermore, mandamus was improper because there was no prior demand for performance. The court would issue no injunction because "rights already lost and wrongs already committed are not subject to injunctive relief . . . when there is no showing the wrong will be repeated.[123]

Dissenters argued:

> The case is important because it sets the tone of enforcement of a new statute which articulates an important legislative policy. . . . The majority says . . . that because the meeting is over and done with the courts are powerless to (or will not) interfere. . . . This will always be the case. By the very nature of the problem relief cannot be sought until after the meeting has been held.[124]

Similarly, the Massachusetts legislature provided that action otherwise valid will remain so in spite of a violation of its open-meetings act.[125]

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[122]Iowa, Code Annotated, sec. 28A.4 (Supp. 1973): "Each public agency shall give advance public notice of the time and place of each meeting, by notifying the communications media or in some other way which gives a reasonable notice to the public. . . ."

[123]Dobrovolny v. Reinhardt, loc. cit., p. 841.

[124]Ibid., p. 842.

[125]Massachusetts, General Laws, Annotated (1973), C. 39, sec. 23C: "(B)ut action otherwise duly taken at any meeting shall not be invalidated by the failure. . . ."

Similarly, the Michigan legislature in passing enrolled Senate Bill No. 920 has provided that:

> In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.[126]

Regarding Houk's concern over the criminal sanctions, Douglas Q. Wickham, an associate professor of law at the University of Tennessee, devoted extensive research to try to uncover a single instance in which an open meeting case involving criminal prosecution had been brought to trial. Despite the fact that this type of sanction is the most prevalent, being found in some 18 states, Wickham could find no single open-meeting case involving criminal prosecution.[127]

In the Baker-Hull resolution, Houk took issue with provisions allowing grand jury deliberations to be closed, since the city conducts no grand jury proceedings. That was already acknowledged a month earlier by Baker. Houk found one oversight in that the proposed ordinance was silent to the matter of rescheduled meeting posting.

He further took issue with the one-half quorum provision since it would prevent two or more councilmen from discussing business if they

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[126]Michigan, Enrolled Senate Bill No, 920 (1976), sec. 10.5

[127]Douglas Q. Wickham, "Let the Sun Shine In!" Northwestern University Law Review, LXVIII, (1973), 496.

served on the same committee.

This provision appears to have been an arbitrary decision by the citizen's task force since, when this writer interviewed Hollister one week prior to House Bill 5684's referral to the House Towns and Counties committee, Hollister stated:

> We don't want to prevent people from talking because a lot of good things happen informally just discussing provisions. But any time a decision begins to be formulated--once it begins to get close to that magic number--and we thought half a quorum--the meeting would have to be open.[128]

Perhaps the half-quorum figure was a bit arbitrary. On the other hand, one could argue that persons serving on the same three-man committee could get together, they just would not be permitted to talk shop.

Whatever the effect, the various provisions were negotiable. The half-quorum provision could have been negotiated to some other figure in city council to exclude two or more from violating the law through happenstance meetings. Council, however, particularly the ordinances and contracts committee, refused to adequately discuss this specific resolution or offer amendments to effect compromise.

The bill's primary sponsor, Baker, may have been negligent in not having met with the city attorney to iron out some of the legal barriers which would prevent the document from becoming a good law.

Regardless of where the fault may lie, the resolution seems destined to die in committee.

The ordinances and contracts committee comprises Councilmen Belen, Baker, and Gunther. Since we have not discussed Gunther's views as adequately as the previously cited two, they follow.

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[128]Interview with Rep. David C. Hollister, Oct. 14, 1975.

Gunther has said he "is not adverse to open meetings" except for two areas. These are in the areas of personnel matters and the sale or purchase of real estate.

Gunther said no real, frank dialogue can take place on personnel matters if the general public is invited. He has also said matters concerning the purchase and sale of real estate matters should remain closed up to the time an option is available. He said older people may be hurt and try to sell their homes in a panic situation to speculators. In Lansing's Logan corridor, for example, he said some had sold $16,000 homes for $12,000.[129] The Logan corridor is a proposed major north-south artery now under construction. Northbound lanes will utilize the existing road which runs from the Capitol City Airport to Eaton Rapids. Southbound lanes will use newly constructed roadway. Originally the road had been a stagecoach route.

Gunther also said any open-meeting law should draw the line at a full-fledged meeting and should not apply to a happenstance meeting of councilmen who run into each other on the street corner.

He also favors the closing of labor negotiations saying that is mostly a game. The hiring of employes should be closed, he says, to prevent embarassment of applicants who might be discouraged from applying where such proceedings take place in the open.

On September 23, 1976 the ordinances and contracts committee again considered the Baker-Hull proposal for open meetings.

"What are we doing now that is not an open meeting?" Belen asked.

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[129]Interview with Councilman Jack Gunther, Nov. 1, 1976.

"Minutes," Baker said. Belen said that if the state law was going to require the expense involved in keeping minutes, it had better provide funds. Currently, many sessions are tape recorded.

Baker replied that keeping minutes applied only to closed sessions. This seemed to satisfy the other two members. He then said that the recently passed Senate Bill No. 920 contained a giant loophole which states:

> This act shall not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.[130]

"You don't want that?" Gunther asked, seeming surprised. Baker said no.

"When does this law take effect?" Gunther asked. Baker said April 1, 1977 and Miss Belen added "April fools day."

"That's a good day for a law like this to go into effect," Gunther said.

"If you pass this," Miss Belen said referring to the city document, "I couldn't have you guys over for Christmas in my new apartment. . . . If three people rode down in the elevator and discussed business, they'd be in violation."

"Frankly, I'm not for either this one or the state's," Gunther said. "It's a bunch of hogwash.[131]

Ending warm-up meets.--In previous years Monday afternoon committee-of-the-whole sessions served to minimize public debate and to convey to the public a sense of council unity. While the meetings have

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[130]Michigan, Enrolled Senate Bill No. 920 (1976), sec. 3.10.

[131]City of Lansing, Michigan, Ordinances and Contracts Committee meeting, Sept. 23, 1976.

been open to the public, 2 p.m. does not encourage public attendance and they were usually very poorly attended.

Four years ago, there had been talk of making city government more credible by improving communication between the council and the people. One experiment had been to move committee-of-the-whole sessions from the back, conference room to the city council chambers.

"On a couple of occasions," Gunther said, we've moved our afternoon sessions into the council chambers and very few people ever showed up."

Most councilmen, back in 1972, agreed that if they discussed every item on the agenda at the evening meeting, the meetings would be much longer than they presently are.[132]

This year, council ended the warm-up sessions of Monday afternoons. Surprisingly the move came not from the new bloc, which has been the most active proponent of open meetings, but from old-bloc members. The move was suggested by the rather conservative Lou Adado and is seen by others as a means by which an aura of unity can once again be restored to council. Any openness obtained thereby is merely fallout.

In the past, warm-up sessions developed concensus. This year, however, with the split, issues are argued in the afternoon session and rehashed in the evening session. This, it was felt, served to deepen the already wide split among council members. Following the decision to abandon the sessions, Mayor pro-tempore Terry McKane confirmed that one reason was to cut down on some of the "verbiage."[133]

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[132] State Journal, Nov. 21, 1972, p. B-2

[133] State Journal, Sept. 14, 1976, p. B-2.

Despite the fact that Baker has been an ardent open-meetings backer, he has mixed feelings regarding the discontinuation of the warm-up meetings. Since the new bloc is in the minority, Baker, Blair and Hull have greater need to discuss that which is necessary to pass measures and obtain votes. Baker, for example, was very critical of the new state law because it permits closed partisan legislative caucuses but does not allow a group of non-partisan lawmakers the same procedural device.[134]

On Sept. 23 I met with Baker in his office before we went to lunch to discuss provisions of open-meetings proposals. Blair dropped in and mentioned the decision to end Monday afternoon sessions.

"Shut the door," Baker said, noting Gunther was in his office next door. "This is what's known as a 'caucus,'" he told me. The two discussed strategy noting that the decision required a rules change. That, in turn, would take a 2/3 majority.[135] Baker did not, however, oppose the decision despite his role as a minority bloc member. In fact he supported the decision to discuss all business in the public meetings. All of the overt dissent was left to Blair.

"We're going to have more shuffling up and down the hallway here and that's why I'm totally against it," Blair said.[136] "I think it's going to drive more decisions underground in all than open up city government." He said he also felt the decision would drive the cost of government up because the staff would have to work longer hours.

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[134]City of Lansing, loc. cit.

[135]Meeting with Baker and Blair, Sept. 23, 1976.

[136]City of Lansing, Committee of the Whole, Sept. 27, 1976

He was also fearful that bored reporters would be driven away from the longer night sessions.

"How many members of the public do you see here?" McKane asked. There were only a handful of reporters and staff in the room. "I had the feeling that we would be putting business of the public before members of the public.[137]

The end to committee-of-the-whole sessions is being tried as a six to eight week experiment.

For about the first time in 30 years, council met without a previous warm-up meet on October 4, 1976. Mary Flood of the State Journal pinch-hitted for Otis White in covering the meeting. Her observations need no comment.

> The Lansing city council's Monday meeting was filled with parliamentary games, postponed decisions and occasional personal slurs.
>
> The first clash occurred about 10 minutes into the meeting when Mayor Graves forced the council to take a special vote to allow councilman Richard Baker to speak for a third time about some proposed new rules for city council procedure.
>
> The venemous tones of the session continued for much of the four-hour meeting which ended with councilman Robert Hull exchanging some lengthy remarks with Lansing resident Anthony Shano. Shano vowed to "flatten" Hull if he speaks disrespectfully to him again.
>
> In between, the audience saw Graves go on a rampage about "matters being considered behind his back" . . .
>
> When Councilman Baker questioned Graves, the mayor's reply was that Baker must be "smoking a pipe of some kind."
>
> So Hull attacked the mayor saying: "The mayor is supposed to be the presiding officer of the council and I wish one of these days he would start doing that instead of throwing monkey wrenches into everything.[138]

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[137]City of Lansing, loc. cit.

[138]State Journal, Oct. 5, 1976, p. B-1.

The charter commission.--The proposal for a new charter made good news copy because it contained a "sunshine" provision requiring open meetings and a "sunset" provision for eliminating governmental agencies.

Since the proposal for a new city charter lost in the November 2, 1976 election, the following discussion may be moot. However, some observers believe that the proposal could pass in an election with light voter turnout. Therefore, a few brief remarks are in order.

The charter commission is to be commended for meeting with open doors just off the first floor lobby of city hall. This writer must take issue with their failure to notify the public when particular points in the charter came up for discussion, however.

The commission's document was written in a series of 96 marathon meetings and much time was spent on routine business matters. While members of the public dropped in from time to time, the commission [139] secretary Mrs. Dorothy Treska said very few stayed for an entire meeting.

On May 12, 1976, this writer wrote the commission asking for information of when open meetings might be discussed. Four months later, after the document had been entirely written, the commission still had sent no reply.[140]

Open-meetings provisions of the charter commission document may offer some improvements over the present council rule 49. However, they fall far short of the new state law and would have been immediately

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[139]Conversation with Mrs. Paul Treska, Secretary, Lansing Charter Commission, Sept. 1, 1976.

[140]Letter to the Lansing Charter Commission, May 12, 1976.

superseded by April 1, 1977, had the charter passed.

Basically, the document says meetings are to be open and that all meetings of the city council shall be posted. The document is silent, however, on how many hours in advance notices must be posted.[141]

Unlike the new state law which requires a 2/3 roll call vote to adjourn to executive session, the presiding officer of city council may call a closed meeting after 24 hours public notice. Any three council members may also call a closed meeting and, in the event the decision is made during a regular or special meeting, a 2/3 majority may vote for a closed session without a roll call being required.[142]

Exceptions to open meetings are basically the same as have been spelled out in the Boissonneault decision.[143]

One change of wording in the document could possibly provide a stumbling block to a tough open-meetings law such as the proposal being sponsored by Baker and Hull, except for provisions in the new state law.

In a mimeographed copy of the document, Sec. 3-201.2 originally read:

> All meetings of the City Council shall be open to the public pursuant to state law and the public shall have a reasonable opportunity to be heard. (Emphasis added.)[144]

This was changed to read:

> Meetings of the City Council shall be open to the public to the extent required by state law and this charter . . . (Emphasis added.)[145]

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[141]City of Lansing, Charter Commission, A report etc., loc. cit.

[142]Ibid.

[143]Boissonneault v. Mason, loc. cit.

[144]Mimeographed draft for Lansing Charter Commission Public Hearing, Aug. 14, 1976, Council Chambers, 10th Floor City Hall.

[145]City of Lansing, Charter Commission, A report etc., loc. cit.

State law, however, provides that:

> Sec. 1.2 This act shall supersede all local charter provisions . . . and
> Sec. 1.3 After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.[146]

Thus, the new state law supersedes the charter, even if it should pass, and permits future councils the option of adopting stronger measures.

Conclusions.--Knowledge is power [147] and in the power struggles of a game called "local government," charges of secrecy have become something of a political football. Various players may score an occasional point but nobody has truly scored a touchdown.

Old bloc city council members are quick to say "we don't have any secret meetings" and they may be right. This writer's experience as a former Lansing city employe supports the tenet that there are few, if any, secrets in city hall. Things told in strict confidence quickly spread like wildfire.

There is, however, a problem with closed and unannounced meetings. Complaints from the press, from citizen groups, from individuals, and from the mayor are too well documented and prevalent to indicate otherwise. But they only seem to arise when a particular power base is threatened.

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[146]Michigan, Enrolled Senate Bill No. 920 (1970) secs. 1.2 and 1.3.

[147]Vide James Madison, Letter to W. T. Barry, Aug. 4, 1822, The Complete Madison, Saul Padover (ed.), (New York: Harper & Brothers, 1953), p. 337: "Knowledge will forever govern ignorance. And a people who mean to be their own governors, must arm themselves with the power knowledge gives. A popular government without popular information or the means of acquiring it, is but a prologue to a farce or a tragedy or perhaps both."

The mayor accuses city council of holding secret meetings, yet neither he nor his office have been champions of the public right to know which facilitates increased citizen participation. His charges appear to be little more than vindictiveness over actions which interfere with his authority as mayor.

On the one hand, he castigates city council for alleged secret meetings which ignore the fact that he is a member of every board and every committee, entitled to full notice.

On the other hand, he is silent to the abysmal record of openness by his appointees on various city boards. This stands in marked contrast to his long and bitter attacks against the old model cities program whose advisers and officials were elected, rather than appointed as political favors under the patronage system.

Citizen groups, particularly the Eastside Neighborhood Organization, have done much to bring the city's decision-making process a little more into the sunshine. However, they are special interest groups and are seen as being in competition with other sections of the city.

The local media have not been strong proponents of open-meetings efforts despite concerns of the Michigan Press Association. This writer found no case in which any of the local news media ever brought suit against a public body which met behind closed doors.

At the State Journal, individual reporters, particularly Poorman, Underwood, and Hughes, are vitally concerned with the open-meetings issue. While the paper may pay occasional, editorial lip service to the need for openness, much of its material concerning open meetings has been buried on inside pages.

On June 9, 1976, for example, it ran an Associated Press article on p. B-5. The story concerned the future of what is now the new, state open meetings law and featured comments by Rep. David Hollister, a local man. According to Mike Hughes,[148] a Muskegon paper had run it as page one news.

The electronic media are even worse. Instead of sending a man to report and interpret what happens, most simply stick a microphone in the face of some official and let him give the official version of what happened.

Councilmen Baker and Hull were elected to office in the wake of "Watergate" and other scandals which had shaken popular confidence in government at all levels. Their power bases depend on a platform of open government.

As members of the minority bloc, however, they must rely on procedural maneuverings to get anything done. While they did not write the rules of the game, they must nevertheless play by them and the rules do not allow for public, open caucus in most cases. For this reason, Blair, once the council's most ardent open-meetings advocate, has not supported the open-meetings resolution by Baker and Hull.

For all the reasons cited above, it seems unlikely that any solution to the abuses of closed government will be forthcoming at the local level in Lansing, Michigan.

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[148]Conversation with Mike Hughes, July 3, 1976.

CHAPTER III

THE MICHIGAN OPEN-MEETINGS LAW

> The (new) legislation is not ideal but it's a whole lot better than what we have on the law now. Present law requires only final actions of public bodies to be taken in public. Deliberations are taken very frequently in private meetings. Many boards meet the night before. We've had examples in our nearby communities of school boards meeting in the homes of other members in closed sessions--all kinds of strange things happening.
>
> -- Rep. David C. Hollister, D-Lansing[149]

Members of the Jackson, Michigan School Board met secretly in the private home of its vice president to discuss the closing of two elementary schools on March 9, 1976. Two days earlier, the home had been the site of another such "administrative briefing" which featured a discussion of Jackson's transition from a junior high to middle school concept. Dr. Louis Romano, professor of administration and higher education at Michigan State University offered expert input.[150]

There is little question that both issues were of vital concern to the parents of school children despite claims of a trustee that "(t)here was no new information presented that hadn't been discussed at the public meetings we've had on the subject.[151] Even if no new data had been presented, a decision had started to crystalize.

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[149]Rep. David C. Hollister, Press Conference, Sept. 16, 1976.

[150]Jackson Citizen Patriot, Mar. 10, 1976, p. 3.

[151]Ibid., quoting Trustee A. James Balfour, Jackson School Board.

According to one woman who had been to the meeting, lists of advantages and disadvantages for both issues had been prepared by the administration. Furthermore, the board's public information coordinator stated that tentative recommendations were presented by the various subcommittees on the middle school program.

When asked why the meeting had been held in a private home, the coordinator said "I don't know. I didn't make the arrangements."[152]

The following month, Michigan Attorney General Frank J. Kelley handed down a ruling in response to a question posed by Sen. Daniel S. Cooper, D-Oak Park, regarding school boards.

> In answer to your question, it is my opinion that the public has a right to be present during discussion leading up to the final vote.[153]

Following that opinion, the Lansing State Journal published an editorial regarding the Lansing School Board:

> Lansing Board of Education's decision to hold an open meeting today to review a new court plan for desegregation of city elementary schools was a good one--and overdue.
>
> The board has been spending too much time behind closed doors during recent months, especially on this subject. Today's session was to have been closed but that decision was apparently reversed after complaints from the news media and other sources.
>
> . . . The board debated the issue for months, again doing what should have been public business mostly in executive sessions, and then delivered four plans--all of such a nature that it was predictable that Judge Fox would find them unacceptable. He did.
>
> . . . The board should get that job done with all the local expertise it can gather--and do it in the open so all citizens

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[152] Ibid., quoting Rick Burnham, coordinator for public information, Jackson, Michigan School Board.

[153] Letter opinion from Frank J. Kelley, Attorney General of Michigan to State Senator Daniel S. Cooper, Apr. 26, 1976.

> can understand what is going on and have an opportunity to respond to it.[154]

The actions of both boards represent a clear violation of the open-meetings principle, if not the law. They reveal inadequacies of the old open-meetings law in Michigan.

First, the closed sessions were repugnant to our system of representative democracy. As pointed out in our first chapter, the public as the electorate needs to be apprised of the pros and cons which relate to any given decision by elected officials if they are to make informed decisions on election day. Obviously, they cannot go beyond and behind decisions which are formulated in closed, secret, or "executive" sessions.

Second, the board decisions did not make use of local talent available within the community, as the State Journal editorial pointed out.

Third, the board, which acted in secret, is going to want to legitimize its decision. In the first case with the Jackson board, it will be harder to sell parents "the public good," if that is truly what the final product is. In the second example, the Lansing School Board found its proposals rejected--not only by the public--but by a federal district judge.

Sources of Michigan open-meetings law.--Michigan has what can best be described as a "patchwork of access legislation."[155] To define the status of its open-meetings provisions, one must consult English

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[154]State Journal, Apr. 29, 1976, p. A-12.

[155]Vide Judith Murrill Baldwin, "Access Laws: Development," Freedom of Information Center Publication, No. 86 (Columbia, Missouri: School of Journalism, University of Missouri, 1962), p. 3.

common law, both the U.S. and Michigan constitutions, statutory law, applicable case law, and opinions by state attorneys general. A discussion follows below.

English common law.--It is clear that the public has no common law right to attend the meetings of its governmental bodies. In this respect, open-meetings legislation has been diametrically different in its development both in point of time and nature from that of access to judicial proceedings and inspection of public records.*

In 1950, the freedom of information committee of the American Society of Newspaper Editors coaxed former New York Herald-Tribune attorney Harold L. Cross out of retirement. The result, a commissioned study, stands as a monument to anybody researching the right to know.[156]

Cross concluded that in matters of access to state and municipal legislative and administrative proceedings, the law as declared is almost

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* Vide Trial of John Lilburne, 4 How. St. Tr. 1270, 1273-4 (Commission of Oyer & Terminer, England, 1649): "I have something to say to the court about the first fundamental liberty of an Englishman in order to his trial; which is that by the laws of this land all courts of justice ought to be free and open for all sorts of peaceable people to see, behold and hear, and have free access unto . . . and yet, Sir, as I came in, I found the gates shut and guarded, which is contrary to law and justice." The gates were opened, the guards were removed and Lieutenant Colonel Lilburne was eventually acquitted of treason charges. Vide also Lord Coke, Institutes, Vol. II, Preface: "These records, for that they contain great and hidden treasure, are faithfully and safely kept (as they well deserve) in the King's Treasury. And yet not so kept but that any subject may for his necessary use and benefit have access thereunto, which was the ancient law of England, and is so declared by an act of Parliament in 46 E 3." (Emphasis supplied). Similarly, the Michigan Supreme Court cited ancient common law rights dealing with the public inspection of records in Nowack v. Auditor General, 243 Mich. 200; 219 N.W. 749; and 60 A.L.R. 1351 (1928): "If there be any rule of the English common-law that denies the public the right of access to public records, it is repugnant to the spirit of our democratic institutions. Ours is a government of the people. Every citizen rules. . . ."

[156]Cross, loc. cit., see generally.

wholly constitutional. After extensive research Cross wrote "I find no judicial decision which grants or denies the right of attendance in the absence of a constitutional provision." Furthermore, the English parliamentary history shows a complete disregard for the "right" of reporters or anybody else to attend deliberative functions.

Each year, before the Queen addresses parliament, there is a loud, ceremonious knocking at the doors before she is permitted to enter. While that custom probably stems from the time of Cromwell, the rivalry between parliament and the crown is much older.

The secret meeting, for our purposes, probably has its origins in the wish of members of the British House of Commons to protect themselves against the reprisal of the monarch for words uttered on the floor.

Sir Edward Hoby, for example, was so roundly abused by Queen Elizabeth I in 1589 that members "durst use no freedom of speech which they thought would give the least offence."[157]

By 1642, parliamentary enactments ended with a warning permitting that "none other" than the parliamentary printer was "to presume to print."

In 1690, however, long after the House of Commons had ceased to fear the monarchy, meetings still continued in secret. Lord Macaulay described the situation:

> All the defences behind which the feeble parliaments of the sixteenth century had entrenched themselves against the attack of prerogative were not only still kept up, but were extended and strengthened. . . . The rules which had been originally designed to secure faithful representatives against the displeasure of the Sovereign, now operated to secure unfaithful representatives

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[157]David Hume, History of England (Edinburgh: 1809), Vol. VI, p. 267, cited by Wiggins, loc. cit., p. 4.

> against the displeasure of the people, and proved much more effectual for the latter than they had ever been for the former.[158]

As late as 1874, "strangers" or reporters could be and sometimes were excluded upon the request of a single member of the house. Since 1875, however, their exclusion is left to the vote of all members.[159, 160]

In addition to the exclusion from parliamentary sessions, the press in England had faced a number of repressive measures including licensing, taxing, and direct censorship. Framers of the U.S. Constitution were primarily concerned with these methods of repression when they wrote the press guarantees of the First Amendment.

Defining open-meeting rights under the U.S. Constitution.--At best, the right of persons to attend legislative proceedings is only implied in the U.S. Constitution. The right, in part derives from press freedoms of the First Amendment. One legal scholar argues:

> It is obvious that the freedom of the press implies the right to gather news and the right of those who possess information to impart news.[161]

He concludes that:

> It is certainly reasonable to conclude that freedom of the press and speech under contemporary conditions includes the right to gather information from government agencies and stands as a constitutional prohibition against all forms of withholding information beyond that reasonably required for the exercise of delegated powers or the protection of other rights.[162]

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[158]Thomas Babington Macaulay, The History of England (London: Macmillan & Co., 1913-15), Vol. III, p. 543.

[159]Cross, loc. cit., citing T. P. Taswell-Langmead, English Constitutional History, 9th ed., p. 720; Frank Thayer, Legal Control of the Press, 2d ed., sec. 9, p. 29.

[160]See generally Wiggins, loc. cit.

[161]Wallace Parks, loc. cit., p. 10.

[162]Ibid., p. 12.

This, he says, is because a chief purpose of the Bill of Rights was to provide legal protection against the various methods by which minorities seek to gain or retain power.[163]

The writer then asks if there are constitutional rights residing in the non-governmental community which are abridged if the congress or President should exceed their constitutional powers in withholding information. If, then, there are such rights, he asks if they impose further limitations on the powers granted. Since the U.S. Supreme Court has not dealt with this issue directly, however,[164,165] one cannot define Michigan open-meetings law under the U.S. Constitution.

Defining open-meeting rights under the Michigan Constitution.-- The Michigan Constitutions have always mandated that the doors of each house of the legislature be open but that has been qualified. The 1908 Constitution stated "unless the public welfare demands otherwise."[166] The 1963 Michigan Constitution changed that to read "unless the public security otherwise requires."[167]

To determine what was meant by "public security" it is necessary to consult the debates of the constitutional convention.[168]

> That, of course, was to take care of the possible but, we hope very remote situation where there would be such a disaster or uprising to affect the public safety and require the legislature to undertake matters with regard to the security of the state.

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[163] Ibid., p. 12: citing James Madison.

[164] Ibid., p. 8.

[165] Vide Letter from Zolton Ferency, Associate Professor of Criminal Justice, Michigan State University to Rep. Thomas H. Brown, May 4, 1976: cited infra.

[166] Michigan, Constitution (1908), Art. 5, sec. 18.

[167] Michigan, Constitution (1963), Art. 4, sec. 20.

[168] Michigan, Official Record, Constitutional Convention 1961

Similarly, the 1963 Constitution requires that legislative committee business be public:

> . . . On all actions on bills and resolutions in each committee, names and votes of members shall be recorded. Such vote shall be available for public inspection. Notice of all committee hearings and a clear statement of all subjects to be considered at each hearing shall be published in the journal in advance of the hearing.[169]

In addition to the legislature, the Michigan Constitution establishes open meetings by boards of institutions of higher education:

> Formal sessions of governing boards of such institutions shall be open to the public.[170]

Unfortunately, the term "formal sessions" has been the cause of much argument and misinterpretation. To find out exactly what is meant by "formal sessions" it is necessary to consult the Address to the People and the Official Record of the 1961 Constitutional Convention:

> The concluding sentence of the section insures that formal sessions of the governing boards of such institutions will be open to the public.[171]

The explanation of Delegate Ink White, who offered the wording as an amendment to the section when it was Committee Proposal 98, is also applicable:

> Actually, I think this amendment is self-explanatory. Meetings of governing boards of the three major universities have been open to the public and news media only for the past 1/2 dozen years and that has been accomplished only after a long period of negotiations. As it stands, the public and news media are invited guests of the governing board, an invitation which could be, conceivably, withdrawn at any time. It seems to me that now that we are creating by constitutional enactment 7 more such governing boards, it would be appropriate that their formal

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(Lansing, Michigan: Speaker, Hines, & Thomas, 1961), Vol. II, p. 2380.

[169]Michigan, Constitution (1963), Art. 4, sec. 17

[170]Ibid., Art. 8, sec. 4.

[171]Michigan, Official Record, loc. cit., Vol. II, p. 3396.

> meetings should be conducted in public sessions. I would urge your support of this amendment. (Emphasis added.)[172]

Also speaking in support of the amendment was Delegate Downs:

> I would like to speak very strongly in favor of Delegate Ink White's amendment. I believe that the boards should be open to the public as a matter of constitutional right. They are public business. The only possibility might be adding some clauses as we did in the legislative, unless public security demands otherwise, . . . [173]

Thus, from the above mention, given to the article by delegates in the official record, it becomes quite clear that the intent of the wording was to open up the clandestine sessions of college and university governing boards.

In summation, then, the Michigan Constitution of 1963 mandates open meetings on the part of the two houses of the legislature, legislative committees, and governing boards of institutions of higher learning.

In the case of the latter, however, additional clarification regarding university and college governing boards must come from the opinion of a Michigan attorney general. This will be discussed infra.

Statutory bases for open-meetings legislation.--The most comprehensive piece of existing open-meetings legislation is the soon-to-be-replaced Michigan Public Meetings Act, 1968 P.A. 261.[174]

The act is very short, being only three sections long. The

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[172] Ibid., Vol. I, p. 1187.

[173] Ibid.

[174] Michigan, Compiled Laws, Annotated (1970), secs. 15.251 - 15.253.

sections require that public meetings be public and provide for advance notice.

Definitions are spelled out in Section 1. They are as follows:

> "Board" means the board of supervisors of any county, the council of any city or village, the board of trustees of any township, the board of education of any school district, the governing body of any state-supported or partially supported college or university, or the board, commission or other governing body of any state or municipal authority or department created by law which has for its purpose the performance of an essential governmental function.

and:

> "Public meeting" means that part of any meeting of a board during which it votes upon any ordinance, resolution, motion or other official action proposed by or to the board dealing with the receipt, borrowing or disbursement of funds or the acquisition, use of (sic) disposal of services or of any supplies, materials, equipment or other property or the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons. The term "public meeting" shall not mean any meeting, the publication of the facts concerning which would disclose the institution, progress or result of an investigation undertaken by a board in the performance of its official duties.[175]

In other words, if any body which performs an essential governmental function holds a meeting at which a vote is taken, the following section applies: "Every public meeting of a board shall be open to the public."[176]

This section has required considerable interpretation. What, for example, is a "public meeting?" The attorney general has ruled and his opinion will be discussed infra.

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[175]Michigan, Compiled Laws (1970), sec. 15.251.

[176]Ibid., sec. 15.252.

The third section [177] requires posting of advance notice at least three days prior to the first regularly scheduled meeting and at least 12 hours prior to a rescheduled meeting or special meeting.

Posting may be effected by (1) posting a copy of the notice prominently at the principal office of the body holding the meeting, (2) posting the notice at the public building in which the meeting is to be held, or (3) by publishing the notice in a general-circulation newspaper in the body's political subdivision.[178] The section further requires that the board supply copies of the public notice to newspapers and radio stations within the political subdivision if they so request.

In addition to P.A. 261, a number of other statutes require various boards to be open. These include county civil service commissions,[179] township civil service commissions,[180] city fire and police retirement boards,[181] legislative retirement boards of trustees,[182] township boards,[183] county boards of commissioners,[184] villages,[185, 186]

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[177] Ibid., sec. 15.253.

[178] Ibid.

[179] Michigan, Compiled Laws, Annotated (1970), sec. 38.411.

[180] Ibid., sec. 38.457.

[181] Ibid., sec. 38.552

[182] Ibid., sec. 38.1032.

[183] Ibid., sec. 41.72b.

[184] Ibid., sec. 46.3.

[185] Ibid., sec. 65.4.

[186] Ibid., sec. 65.5.

city councils of fourth-class cities,[187, 188] metropolitan transportation authorities,[189] and school boards.[190]

Case law effecting the implementation of open meetings.--After extensive research, this writer has only been able to uncover three applicable cases involving enforcement of the current Michigan open-meetings law.

In the first, Fucinari v. Dearborn Board of Education,[191] the Michigan Court of Appeals ruled that a 60-day notice releasing a probationary teacher from employment was defective because the board had acted at an executive session and such action had no legal force or effect. The board had earlier directed its personnel officer to send the 60-day letter to a teacher who lacked tenure. Under case law from other states, however, the board would have merely had to re-run its action in public session for it to have the full effect of law. It is not known whether this was done or not.

In the second case, PIRGIM v. Board of Pharmacy of State of Michigan and Carl E. Cross, Jr., Executive Secretary, Board of Pharmacy,[192] the Ingham County Circuit Court ordered the board to supply minutes even though those minutes had not yet been accepted by the board and were not in final form. Of course, the court set precedent only in Ingham County and not other circuits. However, it must be remembered

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[187] Ibid., sec. 88.6

[188] Ibid., sec. 88.7.

[189] Ibid., sec. 124.425.

[190] Ibid., sec. 340.561.

[191] Fucinari v. Dearborn Board of Education, 32 Mich. App. 108; 188 N.W.2d 229 (1971).

[192] PIRGIM v. Board of Pharmacy of State of Michigan and Carl E.

that Ingham County serves as venue for state agencies. The case has also been used as part of the rationale of an attorney general decision.[193]

The most widely cited case involving open meetings is Boissonneault v. Mason or Boissonneault v. Flint City Council.[194]

This case involved a complaint by Glen A. Boissonneault of the Flint Journal against members of the Flint City Council. The plaintiff sought an injunction to restrain the defendants from meeting in private for purposes of discussing or conducting any business of the City of Flint and from precluding any member of the public from attending any such meeting. The court ruled in favor of the plaintiffs and the defendants appealed to the Court of Appeals which affirmed the decision of the lower court. The defendants then appealed to the Michigan Supreme Court and the case was remanded back to trial court. In remanding the case back to the trial court, the Michigan Supreme Court* opined as follows:

> The agreed statement of facts are:
>
> "Flint city councilmen have met in City Hall at the request of the city manager on several occasions at which meetings the public was excluded. Subjects of discussion generally effect (sic) overall policy and on occasion may involve items which may require legislative action at a later date."

Cross, Jr., Executive Secretary, Board of Pharmacy, Circuit Court for the County of Ingham, Docket No. 75-17842-CZ.

[193]Letter opinion of Frank J. Kelley, Attorney General of Michigan to State Senator Joseph M. Snyder, Nov. 4, 1976.

[194]Boissonneault v. Mason, loc. cit.

*T. M. Kavanagh, C.J., and T. G. Kavanagh, Swainson, Williams, Levin, and J.W. Fitzgerald, J.J., concurred with M. S. Coleman, J.

> If one were to speculate upon what really occurred in these gatherings, any number of possibilities come into focus. For instance:
>
> 1. A firm decision could have been made with only the formalities of a vote remaining.
> 2. Vague theories could have been tested upon colleagues.
> 3. A preliminary discussion could have taken place regarding a subject which may or may not ever come to a vote.
> 4. Legal advice may have been sought from the city attorney.
> 5. Labor negotiations then taking place may have been the subject.
> 6. A rumor involving the reputation of an employee could have been discussed.
> 7. A possible need for land could have been discussed, the knowledge of which might greatly increase the cost to the taxpayers if the probability blossomed into reality.
>
> . . . We cannot apply the law to facts which we do not have.

The court retained jurisdiction and, on December 18, 1974, the trial court, acting on behalf of the Michigan Supreme Court handed down the following order:

> The City Council for the City of Flint, or any members thereof, are restrained from meeting in private for the purpose of making a decision or conducting discussions or deliberations which might lead to a decision involving the city government except for the following purposes:
>
> 1. To consider the employment and appointment, dismissal, suspension or disciplining of any one of the four appointed officials who serve at the pleasure of the Council;
> 2. To consider the appointment or removal of citizens to City Boards and Commissions, provided however, if a decision is reached to remove such an official said official shall have a right upon request to have a public hearing;
> 3. To discuss strategy sessions and interim reports with respect to collective bargaining or potential or pending litigation;
> 4. To consider preliminary negotiations involving the purchase or sale of property, both real and personal, but not involving services or the acquisition thereof except as provided hereinabove;
> 5. To consider records which are specifically exempt by law from public inspection;
> 6. To consider severe threats of riot or insurrection public knowledge of which, in the opinion of the City Council, would be detrimental to efforts to meet or lessen the threat.

The court stipulated that plaintiffs could commence contempt proceedings for non-compliance and mandated the city attorney to report any violation of the court's injunction. The court then dismissed the plaintiffs' appeal as moot.

In summation, the three cases tend to indicate that (1) some actions taken in executive session are null and void, (2) persons living in Ingham County or suing state agencies have a right to minutes even though they have not been officially approved and are not in final form, (3) the courts have spelled out the limits to which certain boards may hold executive sessions.

Open public meetings and Michigan attorneys general.--In the absence of other law, it is necessary to turn to the rulings by attorneys general regarding the status of open-meetings legislation. Not only must one turn to an attorney general decision to clarify a particular point of open-meetings law, he must also turn to such an opinion to determine the affect of other opinions.[195]

On April 17, 1972, the Michigan Attorney General issued an opinion to the effect that his opinions are binding not only upon state government officials but upon all government officials within the state. Therefore, unless or until the courts rule otherwise, his opinions are binding on most officials to whom open meetings legislation might apply.[196]

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[195]See generally William Thompson, "FOI and State Attorneys General," Freedom of Information Center Publication, No. 307 (Columbia, Missouri: School of Journalism, University of Missouri, 1973).

[196]Letter opinion of Frank J. Kelley, Attorney General of Michigan, to State Senator William Faust, April 17, 1972.

As was pointed out earlier, the Michigan Constitution of 1963 requires advance notice of all committee hearings to be published in the journal of the House of Representatives. On July 8, 1965, however, the attorney general specified that did not apply to all committee meetings.[197]

In 1969, the attorney general clarified the term "formal sessions" in Article 8, section 4 of the Michigan Constitution dealing with the governing boards of institutions of higher education. In his opinion, Frank J. Kelley wrote:

> . . . it is my opinion that whenever the governing board of an educational institution of higher learning is convened in accordance with established rules of such body for the transaction of business, it must convene in public session to which the members of the public are to be admitted. Private or executive meetings not held in accordance with established rules or where no business of the board is transacted are not formal sessions. Such private or executive meetings, however, are rarely necessary. And the spirit of our Constitution, the tradition of our democracy, and the need for public access to the workings of public institutions and agencies compel the conclusion they should be actively discouraged. (Emphasis added.)[198]

An institution could conceivably argue, however, that since it is established under the Constitution and not by a lesser agency, the opinion of an attorney general is just that: an "opinion." As previously mentioned, one college board of trustees chairman has even questioned the legislature's power to legislate open meetings of such boards of trustees.[199]

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[197]1965 Michigan OAG 4427 (July 8, 1966).

[198]1969 Michigan OAG 4676 (Aug. 13, 1969).

[199]Mathews to Brown, loc. cit.

A ruling of September 4, 1970 permits members of the press to make tape recordings of public meetings. They must, however, pay for the electricity. The recording must also be made in a way that would not unduly distract from or intrude upon the normal functioning of the meeting.[200]

The landmark attorney general ruling came on January 3, 1972 in a letter to Representative Kildee. According to Frank J. Kelley:

> (a) persistent problem has been the inclination on the part of the members of some public bodies to go into "executive session" to discuss a matter and then, after private discussion, open the doors of the meeting and take a vote on the decision already made in private. As Attorney General, I have ruled that this conduct is not permissible. . . . I said that such behavior was contrary to the intent of the act (P.A. 261) and that the public has a right to be present during any discussion leading up to the final vote since this portion of the meeting is inherently a part of the requirement that public meetings be open.[201]

Thus, the public has not only a right to attend the voting sessions of public bodies, it also has a right to attend sessions leading up to the vote.

On May 22, 1972, the attorney general ruled that in city council rules, any resolution limiting speech of council members during the citizens' portion of a meeting was null and of no effect. Apparently the ruling is meant to encourage a dialogue between the public and its elected officials.[202]

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[200]Letter opinion of Frank J. Kelley, Attorney General of Michigan, to State Representative William Ballenger, Sept. 14, 1970.

[201]1972 Michigan OAG 1372 (Jan. 3, 1972).

[202]Letter opinion of Frank J. Kelley, Attorney General of Michigan, May 22, 1972.

On June 7, 1974, the attorney general ruled that county boards of commissioners need not publish verbatim transcripts of their meetings, however, they "must be specific enough to indicate what occurred at the meeting."[203]

On April 26, 1976, at the request of Sen. Daniel S. Cooper, D-Oak Park, Frank J. Kelley reaffirmed an earlier opinion[204] mandating that the public has a right to be present during discussion leading up to the final votes of boards governing institutions of higher education.[205]

The most recent attorney general decision relating to open-meetings concerns was handed down while this chapter was being written. It involves the City of East Detroit and the public's right to listen to tape recordings of city council meetings which are used to prepare minutes. The attorney general ruled that yes, in fact, the public could listen to the tapes, but does not carry a mandate for municipalities to preserve them.[206] The decision was based on an Ingham County Circuit Court decision[207] and a Utah decision[208] in addition to a Michigan statute that states "that all sessions of the legislative body and all records of the municipality shall be public."[209]

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[203]1974 Michigan OAG 4820 (June 7, 1974).

[204]Letter opinion of Frank J. Kelley, Attorney General of Michigan, to State Senator Daniel S. Cooper, April 26, 1976.

[205]1969 Michigan OAG 4676 (Aug. 13, 1969)

[206]Letter opinion of Frank J. Kelley, Attorney General of Michigan, to State Senator Joseph M. Snyder, Nov. 4, 1976.

[207]PIRGIM v. Board, loc. cit.

[208]Conver, et al v. Board of Education of Nebo School District, et al, 1 Utah 375; 267 P2d 768 (1954).

[209]Michigan, Public Act 279 (1909), sec. 3(L)

In summation, the Michigan attorneys general have ruled (1) that their opinions are binding on all government officials, (2) that only committee hearings and not all meetings are required to be posted in the legislative journal, (3) that boards governing institutions of higher education are to be open, (4) that the press may tape record public meetings, (5) that the public has a right to be present in discussion leading up to the vote, (6) that published reports by county boards of commissioners are not required to be verbatim transcripts, and (7) that tape recordings of city council proceedings are subject to public disclosure.

Strengthening the Michigan open-meetings law.--On April 1, 1977 a new, tougher open-meetings law will go into effect in Michigan. The law represents the culmination of years to effect stronger legislation and to many, it is less than perfect because it allows a number of exceptions to open meetings which will be discussed infra.

Early efforts to open meetings.--In the 1958 session of the Michigan legislature, three bills were introduced to provide a general open meetings law and one passed the Senate with only four dissenting votes. In the House, however, there ensued a bitter committee fight and the Michigan Press Association withdrew its support after amendments permitting executive sessions were added to the bill. It then died in committee.[210]

The following year, an open meetings bill was not reintroduced, but one dealing with meetings of boards of education was. It would have

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[210]Judith Murrill Baldwin, "Access Laws: Defeats," Freedom of Information Center Publication No. 86 (Columbia, Missouri: School of Journalism, University of Missouri, 1962), p. 3.

changed the law from the current:

> All public meetings of the board shall be public and no person shall be excluded therefrom. The board may hold executive sessions but no final action shall be taken at an executive session.

to:

> The board may hold executive sessions whenever the public interest shall require.

In an editorial of July 15, 1959, the Detroit Free Press asked

> How can the public consider and determine its interest if it is disallowed from knowing what considerations are involved or even what action is being taken on its presumed behalf?[211]

The amendment failed and the bill passed.

By 1975, five open meetings bills were being sponsored in the Michigan legislature. The bills, their chief sponsors and dates of introduction were as follows:

Senate Bill 920	Sen. David Plawecki	June 3, 1975
House Bill 4380	Rep. James Smith	February 25, 1975
House Bill 5405	Rep. Perry Bullard	June 23, 1975
House Bill 5684	Rep. David Hollister	October 22, 1975
House Bill 5931	Rep. Paul Rosenbaum	January 27, 1976

Two house bills, those of Bullard and Hollister generated interest in the media but it was Senator Plawecki's bill, as amended by the House which became law. A discussion follows.

House Bill 5405 by Perry Bullard.--This bill was the reintroduction of an open-meetings bill which Bullard had sponsored the previous session. In the end, he had had to vote against it because exceptions had watered it down. Bullard reintroduced the bill on June 23, 1975,

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[211] Ibid., citing Detroit Free Press, July 15, 1959, n.p.

saying Senator Plawecki's bill was too weak.[212] In general, the Bullard bill was somewhat more detailed than the Hollister bill. Definitions are somewhat more complete than the Hollister bill but advance notice is not spelled out to the same extent. In addition, meetings would have been defined as a full quorum in lieu of the one-half quorum provision of the Hollister bill. Penalties were detailed to a greater extent than they were in the Hollister bill which provided for 90 day imprisonment or a $500 fine. Bullard's bill specified who could commence civil action, declared actions taken in violation as null and void, declared fines for violation of not more than $100 unless the violation were intentional, in which case fines could reach $1,000. The bill also made violating public officials personally liable in civil actions.

House Bill 5684 by David C. Hollister.--This bill has previously been discussed in Chapter II, supra. It had been drafted by a 13-member citizens' task force and was introduced to the House on October 22, 1975.

Following public hearings on December 10, 1975 in Lansing and on December 15, 1975 in Livonia, the bill attracted the attention of the media across the state. On January 8, 1976, for example, the Grand Blanc News carried an editorial by Elmer White, executive secretary of the Michigan Press Association.[213]

> Will the sun shine in Michigan? Will lawmakers adopt so-called "sunshine" legislation, designed to bring the light of open meetings of public bodies to the public?
>
> . . . One (pending bill) sponsored by Democratic Rep. David C.

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[212] State Journal, June 26, 1975, p. B-12.

[213] Grand Blanc News, Jan. 8, 1976.

> Hollister of Lansing, defines a meeting as "a gathering of more than one-half quorum of the members of a public body to deliberate or take action upon a matter within the jurisdiction of the public body."
>
> Sunshine backers have offered this thought: If people are truly interested in having the meetings of their public governing bodies open, their legislators will vote to open them.

On January 16, the legislative office of Rep. Thomas Brown, chairman of the House Towns and Counties Committee, released copies of pertinent testimony regarding the Bullard and Hollister bill. A press release quoted Brown as saying:

> Both of December's hearings were very well attended . . . After all, this is a matter which directly touches all of our lives; the right to know what our elected public officials are doing with our tax dollars, how they are allocating our resources, and if they are protecting the public trust and interest.[214]

On January 30, 1976, Representative Hollister delivered a speech before a Michigan Press Association conference. Hollister stressed that House Bill 5684 deals with open meetings, not open government and said the bill has five definitions and no exceptions. He justified the lack of exceptions to open meetings on the five following points:

1. Legal advise from an attorney regarding pending litigation.

> In January 1973, I was elected chairman of the Ingham County Board of Commissioners. The first day after being so elected, I was served in my home with a lawsuit. I was new to the job and frankly scared. I immediately called the County Corporation Counsel. Thereafter, I found that the county usually has $1 to $3 million dollars worth of lawsuits pending on any given day. To allow closed meetings to discuss pending lawsuits would open a loophole large enough to drive a freight train through.

2. Land Purchasing.

> . . . I would point out that although the meeting is closed to discuss the transaction, the real estate people know, the bankers

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[214]Press release of Rep. Thomas H. Brown, Jan. 16, 1976.

know and so do many others. . . . If a compelling public need is demonstrated, the right of eminent domain can be used to acquire the property.

3. Threats to Peace and Public Safety when Emergency Situations Arise.

. . . Emergencies are handled by executive function and are no way hindered by open-meeting legislation.

4. Personnel Questions.

One out of every five employees works for the government and is paid for with taxpayer dollars. To allow this exception is to create another large loophole.

Personnel procedures, hiring, firing, disciplining are administrative functions . . . not . . . subject to this act.

However, if the employee opted to go to the governing board for a hearing or ultimate appeal, the case would be heard openly.

5. Labor Strategy Sessions.

This is the toughest issue of all, for even Florida has written in an exception for strategy sessions. I see collective bargaining and especially sophisticated pre-bargaining strategy development being done by administrative staff. This is an executive function and not covered. When presented to the Board, it would be public.[215]

Responding to Hollister's press conference, the Port Huron Times-Herald wrote:

The speaker looked more like a college student--an appropriate appearance at Michigan State's Kellogg Center--than a legislator which he is.

. . . It is a strong bill and probably doesn't stand a chance, since the idea of making government totally open makes many legislators uncomfortable. They can always think of reasons why certain discussions, certain decisions should be private.

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[215]David C. Hollister, D-Lansing, "A New Day of Sunshine in Michigan," speech to the Michigan Press Association Conference, East Lansing, Michigan, January 30, 1976.

> . . . Life in a fishbowl is probably no great fun for the elected official. But that should be his commitment when he seeks office.[216]

The Lansing State Journal wrote:

> For elected officials in Michigan who prefer to conduct public business in the dark shadows of secrecy, State Rep. Dave Hollister, D-Lansing, has a message: Open the door and let the sun shine in.[217]

By February 9, Baya Harrison III, former deputy attorney general of Florida, arrived in Lansing to stump for both the Hollister bill and the sister resolution, the Baker-Hull proposal for open meetings in the Lansing city government. The Menominee Herald Leader editorially urged the Menominee Charter Commission to create a strong sunshine provision and cited Harrison's appearence to help effect such a provision in Lansing.[218]

> At the same time the Menominee Charter Commission is meeting tomorrow night, the Lansing City Council will be meeting to consider an open meeting ordinance. They will hear from a former Florida official who helped to interpret and enforce Florida's "sunshine law" which requires that all meetings of public officials be open--without exception.
>
> . . . Obviously a current is running through the state toward a stronger open meetings law. Whether or not the state legislature passes a bill, the time is ripe for the City of Menominee to make its own statement of policy on open government in its new charter.

The Kalamazoo Gazette editorially urged the passage of a strong open-meetings law by the legislature after Harrison's testimony in a February 11 Kalamazoo hearing of the House Towns and Counties Committee:

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[216]Port Huron Times-Herald, Feb. 4, 1976, p. 5.

[217]State Journal, Feb. 8, 1976, p. D-1.

[218]Menominee Herald Leader, Feb. 4, 1976, p. 4.

> . . . As he (Harrison) described the (Florida) law, it requires public bodies to work in public, with labor negotiations being the only exception.
>
> Michigan, in our opinion, would do well to give consideration to something similar. After all, government is the people's business.

In addition to the editorial support,[219] the Gazette also gave the hearing front page coverage, citing objections from school officials including the earlier cited Fred Mathews who called the plan "entirely impractical" and aimed at "terrorizing" local officials.[220, 221]

House Bill 5684 remained in committee while Plawecki's Senate Bill 920 served as the vehicle of discussion. Although the Hollister bill failed to get out of committee, both it and the Bullard bill served as levers in the passage of the senate bill. If Senate Bill 920 had been rejected, legislators were told, an even tougher bill would take its place.[222]

Passage of Senate Bill No. 920.--Senator David Plawecki introduced his open meetings bill on June 20, 1975 to the Senate Affairs Committee of the Michigan legislature. When it got back on the Senate floor, it was promptly gutted by a series of crippling amendments.

First, Sen. Charles O. Zollar, R-Benton Harbor, inserted language which would require only "formal" decisions and deliberations to be open to the public.[223] The Associated Press, on December 3, 1975 quoted Sen.

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[219]Kalamazoo Gazette, Feb. 12, 1976, p. A-6.

[220]Ibid., pp. A-1 and A-3.

[221]Hearing before the House Towns and Counties Committee, Kalamazoo City Hall, Feb. 11, 1976. (Tape recorded).

[222]Interview with Neil Krentzin, Michigan House Towns and Counties committee aide, Sept. 28, 1976.

[223]Interview with Beth Leeson, aide to Sen. David Plawecki, Sept. 29, 1976.

Plawecki as saying:

> Essentially, it has eliminated public access to the process of decision-making, which is the major abuse my bill hopes to end. Through this amendment, public bodies can discuss and vote on a bill in secrecy, and merely confirm the private vote at the "formal meeting." If the word "formal" is broadly construed by the courts, the open meetings law could provide less protection than the current law for the public's right to know.[224]

A January 25, 1976 Detroit Free Press editorial took Sen. Daniel S. Cooper, D-Oak Park, to task for other amendments:

> One of Sen. Cooper's amendments, for example would allow public bodies to exclude the public from an "informational session." Any meeting to discuss any kind of public business can be called an "informational session"--the result will be government by secrecy.
>
> Only a handful of senators had the courage to stand up to Sen. Cooper and the Senate majority.[225]

As has been seen from our earlier discussion of boards governing institutions of higher education, the term "formal" has been the principal stumbling block to their meetings becoming open and "informational sessions" are very much a problem.

About the same time, in his state of the state message, Gov. William Milliken called for a strong open meetings law.

> A year ago I suggested that Michigan's open meeting law was too vague and called for it to be strengthened. . . . I will oppose any attempts to weaken the existing law. At the same time, I feel that further clarifications designed to prevent any doubts about the meaning of the current provisions should be considered by the Legislature.[226]

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[224]State Journal, Dec. 3, 1975, p. B-7.

[225]Detroit Free Press, Jan. 25, 1976, p. 2-C.

[226]Governor William G. Milliken, "State of the State Message," Speech before the joint session of the Michigan legislature, January, 1976.

On January 14, House Speaker Bobby D. Crim emphasized that the House must enact

> a strong open meetings bill which will enable the people of this state to exercise full the political responsibilities of citizenship. The public's business will truly belong to the public only insofar as all citizens have clear and certain access to the rooms and chambers in which it is conducted, and this Legislature ought to act now to open them at every level of government in this state.[227]

On February 3, the governor supported the Plawecki bill and criticized the weakening amendments.

> The law very definitely needs further clarification and strengthening--but it certainly does not need to be weakened.[228]

Milliken spelled out what he wanted in an open meetings bill--only limited executive session exceptions, mandatory public notice for all meetings, the publication of a phone number to call for information, and stiff enforcement provisions including the voiding of actions taken at illegal secret meetings. He said these were the minimum standards a new law should meet.

> Any attempt at revision of the existing law that does not meet these basic objectives will represent an unacceptable retreat from the real progress that has been made in ensuring that government is open and responsive to the people it serves.[229]

On March 3, Senate Bill 920 passed the Senate and was sent to the House Towns and Counties Committee. Commenting on the bill's inadequacy, the Lansing State Journal wrote the following:

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[227]Rep. Bobby D. Crim, Speaker of the Michigan House of Representatives, Speech before the Michigan House, Jan. 14, 1976.

[228]State Journal, Feb. 4, 1976, p. B-9.

[229]Ibid.

> For those concerned about the need for government to conduct the public's business in public, there might be an initial impulse to applaud an open meetings bill just passed by the State Senate.
>
> Even a quick look, however, shows there is not much to cheer about. The Senate measure appears to be little more than window dressing--and, in fact, could make for more secrecy in government rather than less.
>
> Basically, the bill starts out by saying that the business of public bodies be conducted in the open. Cheers. Then it goes on to list all kinds of exemptions.
>
> The House should not accept this bill and indeed should come back with something much stronger and more specific.[230]

Between March 4 and June 8, when House Substitute for Senate Bill No. 920 left committee with a 9-1-1 bipartisan vote and a recommendation for passage by the full House, some 45 amendments had been offered in response to questions posed by various groups such as the Michigan Municipal League, the Michigan Hospital Association, the Liquor Control Commission, school board, township and county associations. Commenting on the Michigan Hospital Association's opposition, a committee aide told this writer that "they would rather have a doctor go on killing people rather than discuss discipline in public because malpractice insurance might go up." Below are some of the comments the bill drew.[231]

Tim Richard, editorial director of the Observer and Eccentric Newspapers told the committee to "(k)eep up the good work," adding

> I'm not enough of a legal expert to detect any fishhooks, but in general I think this is a vast improvement over previous legislation the two houses were considering.
>
> I am particularly pleased that the problem of special meetings is being treated in the context of an open meetings bill, because

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[230] State Journal, Mar. 6, 1976, p. A-6.

[231] Krentzin interview, loc. cit.

this is where a great many abuses were coming from.

I am happy to see that the hypocritical term "executive" has been replaced by the more honest term "closed." [232]

Stanley A. Thompson, Superintendent of Inland Lakes Schools found the bill "demanding yet reasonable." However, he went on to say:

I cannot understand why legislation already in existence in the state is insufficient to provide proper surveilance (sic) of meetings of various public bodies.[233]

Zolton Ferency, associate professor of criminal justice at Michigan State University, also a former Democratic state party chairman and standard bearer for the Human Rights Party questioned the need for such a law because of existing constitutional guarantees:

Such legislation tends to water down constitutional guarantees, and should only be considered after a court of appropriate jurisdiction has ruled against the assertions of such rights under constitutional provisions. In my opinion, such a test has not yet been made of the people's right of open access to all proceedings of public bodies.[234]

Thus, he is in agreement with previously cited constitutional lawyer Wallace Parks that the implied constitutionality of the public to attend proceedings of its public bodies has not been tested thoroughly in the courts.

Differing with Ferency was Fred L. Mathews, chairman of the board of trustees of Southwestern Michigan College, who supported his opinion with an unnamed legal opinion by Professor Charles Rice of the Notre Dame

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[232]Letter from Tim Richard, Editorial Director, The Observer & Eccentric (Birmingham and Livonia) Newspapers, to Rep. Thomas H. Brown, Chairman House Towns and Counties Committee (hereinafter cited as Rep. Brown), Lansing, Michigan Apr. 30, 1976.

[233]Letter from Stanley A. Thompson, Superintendent of Inland Lakes Schools, to Rep. Brown, May 3, 1976.

[234]Ferency to Rep. Brown, loc. cit.

Law School.

> Several weeks ago I sent you a copy of my testimony before the House Town (sic) and Counties Committee in which I opposed the Open Meeting Bill on practical, ethical and constitutional grounds. I again assure you that if this unconstitutional legislation is passed, it will also be tested in the courts. I am confident it too will be declared unconstitutional. (Emphasis supplied.)[235]

Elmer White, executive secretary of the Michigan Press Association said "I believe most newspaper people in Michigan would support SB 920 in its present form," but cautioned against any more exceptions to open meetings.[236]

Richard A. Ross, State Personnel Director, took issue with the five day preparation time for minutes and offered several other amendments dealing with hiring in executive session, leaving personnel matters to closed session unless openness is requested, allowing closed sessions for determining pay and benefits and/or potential or pending litigation, and requiring persons seeking civil relief to post security.[237]

Charlotte Copp, president of the League of Women Voters of Michigan urged the committee to adopt the bill[238] while Malcom Katz, deputy superintendent of the Michigan department of education[239] and

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[235]Mathews to Rep. Brown, loc. cit.

[236]Letter from Elmer E. White, Executive Secretary, Michigan Press Association to Rep. Brown, May 5, 1976.

[237]Letter from Richard A. Ross, Michigan Personnel Director, to Rep. Brown, May 10, 1976.

[238]Letter from Charlotte Copp, President of the League of Women Voters of Michigan, to Rep. Brown, May 10, 1976.

[239]Letter from Malcom Katz, Deputy Superintendent, Michigan Department of Education, to Rep. Brown, May 10, 1976.

Carl Levin, president of the Detroit city council[240] urged still more weakening amendments and exemptions from open-meeting requirements.

Associated Press writer Mary Stevenson summed up the difference between Senate Bill No. 920 when it left the Senate on May 3 and the document as House Substitute for Senate Bill No. 920 as it left the House Towns and Counties Committee on June 8.

> The bill as it came from the Senate allowed closed sessions for a variety of reasons including informational sessions, discussions on hiring or meetings with attorneys.
>
> The bill as it now stands requires that before a closed meeting is called for the reasons allowed, a roll call vote must be taken and the minutes must contain an explanation of why the closed session is needed. A closed-door session requires approval by a two-thirds majority.
>
> Under the bill, a public official who intentionally violates the act is guilty of a misdemeanor punishable by a fine of up to $1,000 for the first offense. If he is convicted a second time in the same term, he must be removed from office.[241]

The measure passed the House of Representatives on June 24, 97 to 6. Representatives Hollister and Brown had done their homework by providing ready answers to a number of potentially crippling amendments. In all, the house substitute bill withstood four and one half hours of debate and escaped more than three dozen floor amendments. Following passage of the bill, Rep. Brown directed a press release which said with his upper-case phrases:

> All of the valid questions and objections to openness have been dealt with in this act. So in this, our 200th year as a nation, the nation of Democracy, it could not be a better time to assure the people of Michigan that what rightfully belongs to them shall

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[240] Letter from Carl Levin, President Detroit Common Council, to Rep. Brown, May 20, 1976.

[241] State Journal, June 9, 1976, p. B-5.

> truly be theirs: THE ABILITY TO OPENLY VIEW THEIR AGENTS OF GOVERNMENT--our elected and appointed public officials--TO VIEW THEM AS THEY PERFORM THEIR DUTIES WHICH WE HAVE DELEGATED TO THEM--
> TO VIEW THEM AS THEY SPEND OUR TAX DOLLARS--
> AND TO VIEW THEM WHEN THEY MAKE THE NECESSARY AND CRUCIAL DECISIONS THAT AFFECT OUR LIVES![242]

House Substitute for Senate Bill No. 920 then went to conference committee.

Conferees for the House were Reps. Brown and Hollister. Conferees for the Senate were Senators William Faust, D-Westland; Robert VanderLaan, R-Grand Rapids; and David Plawecki. Senator Cooper fought to get on the conference committee but was unsuccessful. Following that, a committee aide said there were some 13 changes from the way the bill had passed the House and of those, probably eight or nine were at the insistence of Cooper.[243]

Among the changes, subcommittees were exempted from advance notice provisions. Partisan caucuses of members of the state legislature were permitted to meet in closed session over objections from Hollister and Fredricks who later cast a dissenting vote saying:

> Mr. Speaker and members of the House:
> I voted against the conference report on Senate Bill 920 because this is another instance of separate standards for the legislature compared with local government.
>
> The conference report provided that legislators caucuses will be exempt from the provisions of the bill. How different is a caucus decision on policy from a meeting of part of the school board at someone's home or the closed gathering of part of the township board? It is easy for the legislature to impose strict open meeting requirements when it is basically exempt from them itself.[244]

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[242]Press release from Rep. Brown, June 25, 1976.

[243]Krentzin interview, loc. cit.

[244]Michigan, Journal of the House of Representatives, 78th Legislature, Regular Session, 1976, LXXXVIII, 2730.

Hollister's section requiring automatic removal from office was considered unconstitutional because it conflicted with Article IV, section 16 of the Michigan Constitution. In its place, second offences were made a high misdemeanor with a possible year imprisonment and a $2,000 fine. The conference committee required some 150 meetings and on July 2, the bill went to the floor of the Senate.[245]

The July 2 session of the Senate was the last before the legislature adjourned for the summer. Senator VanderLaan was not anxious to report the bill out of committee because of the bulk of legislation requiring action.[246] The bill went to the floor but was repeatedly held up by Senator Cooper.

In a not so veiled reference to Cooper, Rep. Brown directed a press release which, in part, stated:

> . . . even while the Conference report was being printed and then, while the report was being debated in the Senate, one senator continued to demand changes in the bill's language.[247]

Every time Cooper demanded changes, of course, the report had to be sent back for re-printing. Because of this, a number of senators including Earl Nelson, D-Lansing, were absent from the final vote. The report lost with 19 yeas and 8 nays because it lacked a majority of senators.[248] Senator Plawecki, however, moved to reconsider the vote by which the

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[245]Leeson interview, loc. cit.

[246]Ibid.

[247]Press release from Rep. Brown, July 9, 1976.

[248]Michigan, Journal of the Senate, 78th Legislature, Regular Session, 1976, LXXXIX, 1752-54.

conference report was not adopted and the motion to reconsider prevailed.[249]

During the summer, extensive lobbying took place to secure passage of House Substitute for Senate Bill 920 in its amended form as the first conference. In addition to representatives and aides supporting the report and gathering support from fellow Democrats, Bill Long of the governor's staff lobbied with Republicans.

In a press release directed by Sen. Plawecki's office, Dan Troutman wrote:

> One of the first tasks before the Senate when the Legislature reconvenes on September 13 will be reconsideration of the Open Meetings Act, which addresses one of the most critical--and controversial--issues in government.[250]

The press release further mentioned the Plawecki motion to reconsider which had kept the bill from dying and, fortunately, a second conference was not necessary.

On September 16, 1976, the bill passed both the House and Senate. It passed the Senate with 32 yeas and 3 nays. It passed the House with 86 yeas and 7 nays.[251, 252]

The bill was enrolled and presented to the governor on September 23 at 11:41 a.m.[253]

Senate Bill No. 920 was signed into law on October 5, 1976 by Governor Milliken. He said:

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[249]Ibid.

[250]Press release of Sen. David Plawecki, Sept. 6, 1976.

[251]Michigan, Journal of the Senate, 78th Legislature, Regular Session, 1976, LXXXXIII, 1867.

[252]Michigan, Journal of the House, loc. cit.

[253]Journal of the Senate, op. cit., LXXXXVII, 1924.

> Citizens need to know--in fact they must know--what their government is doing. This new law helps open government to the bright light of public scrutiny and responds to the public's right to know.[254]

Reactions from the news media.--Reaction to the new open-meetings bill has generally been supportive if not overwhelmingly laudatory. Immediately following passage by the Senate and House, Detroit Free Press reporter Louis M. Heldman wrote:

> Both houses of the Legislature passed Thursday the most comprehensive bill in Michigan history requiring open meetings of public bodies.
>
> . . . Ironically, after passing the open meetings measure, the Senate adjourned into closed party caucuses, which are permitted under the bill.[255]

The Lansing State Journal said:

> The bill passed last week was a compromise. It is one of several "open meetings" bills argued in the legislative halls in recent years. The bill has some weaknesses, but overall it is an encouraging step away from the closed door practices.
>
> . . . Though the proposal may have weaknesses cited by critics, it puts in writing rules designed to help the public know what's going on in government. That is an improvement compared to what we have now.[256]

Following the governor's signature, the State Journal wrote:

> One of the best things to come out of the Michigan legislature this year was passage in September of an open meeting bill for public agencies after years of struggle and delay.
>
> Gov. Milliken signed the measure into law Tuesday despite critics who contend it is both too lenient and too restrictive.
>
> We think the law is a reasonable compromise between such extremes. The alternative for the legislature was to do nothing--which is

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[254]Press release from the Executive Office, Michigan Capitol, Lansing, Michigan, Oct. 5, 1976.

[255]Detroit Free Press, Sept. 17, 1976, p. 3.

[256]State Journal, Sept. 20, 1976, p. A-4.

what it has done for years. Because of that the state has lived too long with largely meaningless and unenforceable open meeting laws.[257]

Editorially, the Detroit Free Press wrote:

The Open Meetings bill passed by the Legislature represents a significant step toward better government in Michigan.

Better because the public can be more assured that it will know what government is doing.

. . . The new law does not go as far as we would have liked. . . . We are sorry to see the House and Senate insisting that the secrecy of their own partisan legislative caucuses be sanctioned by state law. Even Congress is starting to open up its party caucuses to public view; state legislative leaders should open up the Lansing meetings, especially since such a blast of fresh air would not be prohibited by the new law.[258]

The Oakland Press editorialized that:

In Oakland County, many government boards and commissions have traditionally found it advantageous to keep the public at arm's length, each nurturing its own style of excluding the public from debates over policies.

The county commissioners meet in closed-door party caucuses. Road commissioners huddle in the managing director's office before public sessions. The parks commission frequently schedules meetings without notifying the press or public. And many school boards routinely meet privately before public sessions convene.

If those bad habits persist next year, some of those public officials could find themselves in court--or jail.[259]

Conclusions.--In lieu of conclusions, this writer has opted for a side-by-side analysis of the old and new open-meetings laws.

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[257]State Journal, Oct. 7, 1976, p. A-12.

[258]Detroit Free Press, Sept. 19, 1976, p. 2-F.

[259]The Oakland Press, Sept. 21, 1976, p. A-4.

APPENDICES

APPENDIX A

ANALYSIS OF MICHIGAN OPEN-MEETINGS LAWS

APPENDIX A

ANALYSIS OF MICHIGAN OPEN-MEETINGS LAWS

(Prepared November, 1976)

The new Michigan open-meetings act, Enrolled Senate Bill No. 920, will supersede the old Public Act 261 and add to other sections of existing open-meetings law as indicated below:

THE LAW PRIOR TO APRIL 1, 1977	THE LAW AS CHANGED BY SENATE BILL 920
I. STATEMENTS OF POLICY/INTENT: (Set the tone for future litigation involving open meetings)	
"An act to require that meetings of the governing bodies of political subdivisions and of certain authorities and other agencies performing essential governmental functions shall be open to the public." (P.A. 251, 1968) Superseded.	"An act to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts." (All sections referred to in this column refer to Enrolled Senate Bill No. 920)
II. DEFINITIONS:	
A. "'Board' means the board of supervisors of any county, the council of any city or village, the board of trustees of any township, the board of education of any school district, the governing body of any state-supported or partially supported college or university, or the board, commission or	A. "'Public body' means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or

other governing body of any state or municipal authority or department created by law which has for its purpose the performance of any essential governmental function." (Michigan, Compiled Laws (1970), sec. 15.251.1). Superseded.

B. "'Public meeting' means that part of any meeting of a board during which it votes upon any ordinance, resolution, motion or other official action proposed by or to the board dealing with the receipt, borrowing or disbursement of funds or the acquisition, use of (sic) disposal of services or of any supplies, materials, equipment or other property or the fixing of personal or property rights, privileges, immunities, duties or obligations of any person or group of persons." (Ibid., sec. 15.251.2). Superseded.

III. MEETINGS TO BE PUBLIC:

A. "Every public meeting of a board shall be open to the public." (Ibid., sec. 15.252). Superseded.

B. Consult definition of "public meeting" supra.

C. " . . . the public has a right to be present during any discussion leading up to the final vote . . ." (1972 Michigan OAG 1372 (Jan. 3, 1972).

proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement." (2a)

B. "'Meeting' means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy." (2b)

C. "'Closed session' means a meeting or part of a meeting of a public body which is closed to the public." (2c)

D. "'Decision' means a determination, action vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy." (2d)

A. "All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act." (3.1)

B. "All decisions of a public body shall be made at a meeting open to the public." (3.2)

C. "All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as otherwise provided in sections 7 and 8." (3.3)

D. In city council rules, any resolution limiting the speech of council members during the citizens' portion of a meeting is null and of no effect. (Letter opinion of Frank J. Kelley, Attorney General of Michigan, May 22, 1972).

E. Signing of "guest lists" is often customary for many boards.

F. Additional Open-Meeting Mandates:

1. The legislature. (Michigan Constitution (1963), Art. 4, sec. 20.).

2. Legislative committees. (Ibid., Art. 4, sec. 17).

3. Universities and colleges. (Ibid., Art. 8, sec. 4).

4. County civil service commissions. (Michigan, Compiled Laws, Annotated (1970), sec. 38.411).

5. Township civil service commissions. (Ibid., sec. 38.457).

6. City fire and police retirement boards. (Ibid., sec. 38.552).

D. "A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide a rule that the right to address may be limited to prescribed times at hearings and committee meetings only." (3.5)

E. "A person shall not be required as a condition to attendance at a meeting of a public body to register or otherwise provide his name or other information or otherwise to fulfill a condition precedent to attendance." (3.4)

F. Additional Open-Meeting Mandates:

"After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act." (1.3)

7. Legislative retirement boards of trustees. (Ibid., sec. 38.1032).

8. Township boards. (Ibid., sec. 41.72b).

9. County boards of commissioners. (Ibid., sec. 46.3).

10. Village councils. (Ibid., 65.4 and 65.5).

11. City councils of fourth-class cities. (Ibid., secs. 88.6 and 88.7).

12. Metropolitan transportation authorities. (Ibid., 124.445).

13. School boards. (Ibid., sec. 340.561).

IV. NOTICE

A. "Public notice shall be given by posting a copy of the notice prominently at the principal office of the body holding the meeting or at the public building in which the meeting is to be held or by publishing the notice once in a newspaper of general circulation in the political subdivision where the meeting will be held . . . "(Ibid., sec. 15.253)

A. "A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body. If a public body is part of a state department, part of the legislative or judicial branch of state government, part of a institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district. If a public body does not have a principal office, the required public notice for a local public body shall be

B. "Every board shall hold all public meetings at specified times and places, of which public notice shall be given." (Ibid.)

C. "Public notice shall be given . . . at least 3 days prior to the time of the first regularly scheduled meeting in the case of regular meetings . . ." (Ibid.)

D. ". . . and at least 12 hours prior to the time of the meeting in the case of special or rescheduled meetings. . . ." (Ibid.)

E. Dissemination of public notice:

1. "The board holding any meeting shall supply, on request, copies of the public notice thereof to any newspaper of general circulation in the political subdivision in which the meeting will be held and to any radio station which regularly broadcasts into the political subdivision." (Ibid.)

posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state. A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address." (4)

B. "A meeting of a public body shall not be held unless public notice is given as provided in the section by a person designated by the public body." (5.1)

C. "For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar year or fiscal year a public notice . . ." (5.2)

D. "For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18 hour notice shall not apply to special meetings of subcommittees." (5.4)

E. Dissemination of public notice:

1. "Upon written request, a public body at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge." (Ibid., sec. 6.2)

2. No provision for the dissemination to the general public is found under existing law.

V. REPORTS OF PROCEEDINGS:

A. Official Reports (Minutes): Current law and legislation governing official reports of proceedings is covered by a patchwork of Michigan open records law. In general, it is suggested the reader consult the following sources:

1. Michigan Constitution (1963), Art. 4, sec. 18: Legislative Journals.

2. Ibid., Art. 4, sec. 17: Legislative committee reports.

3. Ibid., Art. 4, sec. 6: Commissions on legislative apportionment.

4. Michigan, Compiled Laws, Annotated (1970), secs. 24.221 to 24.223 (Administrative Procedures Act): State agencies.

5. Ibid., sec. 340.562: boards of education.

6. Right to inspect records generally:

2. "Upon the written request of an individual, organization, firm or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to 5(5)." (6.1)

A. Official Reports (Minutes): Enrolled Senate Bill No. 920 establishes uniform policy for official reports of proceedings as follows:

1. "Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting." (9.1)

2. Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying." (9.2)

3. "Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body." (9.3)

a. Ibid., sec. 750.492: county, city, and township records.

b. Michigan, Constitution (1963), Art. 9, sec. 23: Financial records.

B. Unofficial Reports:

1. Proposed minutes were ordered to be produced even though those minutes had not yet been accepted by the board nor were they in final form. (PIRGIM v. Board of Pharmacy of State of Michigan and Carl E. Cross, Jr., Executive Secretary, Board of Pharmacy, Circuit Court for the County of Ingham, Docket No. 75-17842-CZ.) Note: While precedent was set only in the Ingham County Circuit Court, said court is venue for most litigation against state agencies and boards.

2. Tape recordings used to prepare minutes of city council proceedings are subject to public disclosure. (Letter opinion of Frank J. Kelley, Attorney General of Michigan to State Senator Joseph M. Snyder, Nov. 4, 1976.)

3. Members of the press may not be prohibited from making a tape recording of a public meeting if they pay for public electricity and the recording is made in a way that would not unduly distract from or intrude upon the normal functioning of the meeting. (Letter opinion of Frank J.

4. "A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, shall not be available to the public and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved. (7.2)

B. Unofficial Reports:

"Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer." (9.3)

Kelley, Attorney General of Michigan to State Representative William Ballenger, Sept. 4, 1970.)

VI. EXEMPTIONS FROM OPEN MEETINGS

A. By board or agency:

Except as specifically mandated to hold open public meetings, various boards could and did hold closed sessions. The new law is generally seen as mandating openness unless an agency, board, or particular subject matter is specifically exempted.

B. Exclusions by subject matter:

1. Personnel matters:

a. "To consider the employment and appointment, dismissal, suspension or disciplining

A. By board or agency:

1. Judicial proceedings. (3.7)

2. The worker's compensation appeal board. (3.8a)

3. The employment security appeals board. (3.8b)

4. The teacher tenure commission. (3.8c)

5. An arbitrator or arbitration panel appointed by the employment relations commission. (3.8d)

6. An arbitration panel selected pursuant to chapter 50A of PA 236. (3.8e)

7. Social or chance gatherings or conferences not designed to avoid the act. (3.10)

8. Partisan caucuses of members of the state legislature. (8g)

B. Exclusions by subject matter:

1. Personnel matters:

a. "To review the specific contents of an application for employment or appointment

of any of the . . . appointed officials who serve at the pleasure of the council." (Boissonneault v. Mason, 392 Mich. 685; 225 N.W.2d 519 (1974)).

b. "To consider the appointment or removal of citizens to city boards and commissions, provided however, if a decision is reached to remove such an official said official shall have a right upon request to have a public hearing." (Ibid.)

2. "To discuss strategy sessions and interim reports with respect to collective bargaining or potential or pending litigation." (Ibid.)

3. "To consider preliminary negotiations involving the purchase or sale of property, both real and personal, but not involving services or the acquisition thereof, except as provided hereinabove." (Ibid.)

4. "To discuss . . . pending litigation." (Ibid., vide (2) supra.)

to a public office when the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act." (8f)

b. "To consider the dismissal, suspension or disciplining of, or to hear complaints or charges brought against, a public officer, employe, staff member, or individual agent when the named person requests a closed hearing." (8a)

c. "To consider the dismissal, suspension, or disciplining of a student when the public body is part of the school district, intermediate school district, or institution of higher education which the student is attending, when the student or the student's parent or guardian requests a closed hearing." (8b)

2. "For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either negotiating party requests a closed hearing. (8c)

3. "To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained. (8d)

4. "To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial

5. "To consider records which are specifically exempt by law from public inspection." (Ibid.)

7. "To consider severe threats of riot or insurrection public knowledge of which, in the opinion of the (board) would be detrimental to efforts to meet or lessen the threat. (Ibid.)

8. "The term 'public meeting' shall not mean any meeting, the publication of the facts concerning which would disclose the institution, progress or result of an investigation undertaken by a board in the performance of its official duties." (Michigan, Compiled Laws (1970), sec. 15.251)

VII. ENFORCEMENT

A. Criminal Sanctions:

Not generally seen as effective in the 18 states which have had such provisions. (Vide 68 Northwestern University Law Review, 480 (1973).)

effect (sic) on the litigating or settlement position of the public body." (8e)

5. "To consider material exempt from discussion or disclosure by state or federal statute." (8h)

6. "By a committee of a public body to adopt a nonpolicymaking resolution of tribute or memorial and which is not adopted at a "meeting" as previously defined." (3.10)

A. Criminal Sanctions:

1. First offence: a fine of not more than $1,000.00. (12.1)

2. Second offence: a fine of not more than $2,000.00 and/or imprisonment for not more than 1 year, or both. (12.2)

B. Nullification:

1. The dismissal of a teacher lacking tenure was found to be of no effect because the action took place in a closed session. (Fucinari v. Dearborn Board of Education, 32 Mich. App. 108; 188 N.W.2d 229 (1971).)

2. Courts in other states have been reluctant to invalidate decisions which only technically violate an open meetings act. (See text.)

C. Civil Action

1. Injunctive relief was granted in re Boissonneault, loc. cit.

2. No clear mandate for civil relief in the form of injunction, mandamus, or personal liability.

B. Nullification:

1. "A decision made by a public body may be invalidated if the public body has not complied with the requirements . . ." (10.2)

2. ". . . the public body may . . . reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment." (10.5)

C. Civil Action

1. Injunctive relief against a local public body may be sought by the attorney general, prosecuting attorney of the county, or a person with venue in the circuit courts. (11.1 and 11.2)

2. "An action for mandamus against a public body . . . shall be commenced in the court of appeals." (11.3)

3. ". . . the person shall recover court costs and actual attorney fees for the action . . . if civil relief is obtained." (11.4)

4. Personal liability:

a. "A public official who intentionally violates this act shall be personally

liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees . . ." (13.1)

b. An action for damages under section 13 may be joined with an action for injunctive or exemplary relief. (13.3)

APPENDIX B

ENROLLED SENATE BILL NO. 920

STATE OF MICHIGAN
78TH LEGISLATURE
REGULAR SESSION OF 1976

Introduced by Senators Plawecki, Corbin, Kammer, O'Brien, Davis, McCollough, Hertel, Pursell and Faxon

ENROLLED SENATE BILL No. 920

AN ACT to require certain meetings of certain public bodies to be open to the public; to require notice and the keeping of minutes of meetings; to provide for enforcement; to provide for invalidation of governmental decisions under certain circumstances; to provide penalties; and to repeal certain acts and parts of acts.

The People of the State of Michigan enact:

Sec. 1. (1) This act shall be known and may be cited as the "Open meetings act".

(2) This act shall supersede all local charter provisions, ordinances, or resolutions which relate to requirements for meetings of local public bodies to be open to the public.

(3) After the effective date of this act, nothing in this act shall prohibit a public body from adopting an ordinance, resolution, rule, or charter provision which would require a greater degree of openness relative to meetings of public bodies than the standards provided for in this act.

Sec. 2. As used in this act:

(a) "Public body" means any state or local legislative or governing body, including a board, commission, committee, subcommittee, authority, or council, which is empowered by state constitution, statute, charter, ordinance, resolution, or rule to exercise governmental or proprietary authority or perform a governmental or proprietary function, or a lessee thereof performing an essential public purpose and function pursuant to the lease agreement.

(b) "Meeting" means the convening of a public body at which a quorum is present for the purpose of deliberating toward or rendering a decision on a public policy.

(c) "Closed session" means a meeting or part of a meeting of a public body which is closed to the public.

(d) "Decision" means a determination, action, vote, or disposition upon a motion, proposal, recommendation, resolution, order, ordinance, bill, or measure on which a vote by members of a public body is required and by which a public body effectuates or formulates public policy.

Sec. 3. (1) All meetings of a public body shall be open to the public and shall be held in a place available to the general public. All persons shall be permitted to attend any meeting except as otherwise provided in this act.

(2) All decisions of a public body shall be made at a meeting open to the public.

(3) All deliberations of a public body constituting a quorum of its members shall take place at a meeting open to the public except as otherwise provided in sections 7 and 8.

(4) A person shall not be required as a condition to attendance at a meeting of a public body to register or otherwise provide his name or other information or otherwise to fulfill a condition precedent to attendance.

(5) A person shall be permitted to address a meeting of a public body under rules established and recorded by the public body. The legislature or a house of the legislature may provide by rule that the right to address may be limited to prescribed times at hearings and committee meetings only.

(6) A person shall not be excluded from a public meeting except for a breach of the peace actually committed at the meeting.

(7) This act shall not apply to judicial proceedings but shall apply to a court while exercising rule-making authority and while deliberating or deciding upon the issuance of administrative orders.

(8) This act shall not apply to the following boards, commission, or panel only when deliberating the merits of a case:

(a) The worker's compensation appeal board created under Act No. 317 of the Public Acts of 1969, as amended, being sections 418.101 to 418.941 of the Michigan Compiled Laws.

(b) The employment security appeals board created under Act No. 1 of the Public Acts of the Extra Session of 1936, as amended, being sections 421.1 to 421.67 of the Michigan Compiled Laws.

(c) The teacher tenure commission created under Act No. 4 of the Public Acts of the Extra Session of 1937, as amended, being sections 38.71 to 38.191 of the Michigan Compiled Laws, when acting as a board of review from the decision of a controlling board.

(d) An arbitrator or arbitration panel appointed by the employment relations commission pursuant to the authority given the commission by Act No. 176 of the Public Acts of 1939, as amended, being sections 423.1 to 423.30 of the Michigan Compiled Laws.

(e) An arbitration panel selected pursuant to chapter 50A of Act No. 236 of the Public Acts of 1961, being sections 600.5040 to 600.5065 of the Michigan Compiled Laws.

(9) This act shall not apply to a committee of a public body which adopts a nonpolicymaking resolution of tribute or memorial and which is not adopted at a meeting as defined in section 2.

(10) This act shall not apply to a meeting which is a social or chance gathering or conference not designed to avoid this act.

Sec. 4. The following provisions shall apply with respect to public notice of meetings:

(a) A public notice shall always contain the name of the public body to which the notice applies, its telephone number if one exists, and its address.

(b) A public notice for a public body shall always be posted at its principal office and any other locations considered appropriate by the public body.

(c) If a public body is a part of a state department, part of the legislative or judicial branch of state government, part of an institution of higher education, or part of a political subdivision or school district, a public notice shall also be posted in the respective principal office of the state department, the institution of higher education, clerk of the house of representatives, secretary of the state senate, clerk of the supreme court, or political subdivision or school district.

(d) If a public body does not have a principal office, the required public notice for a local public body shall be posted in the office of the county clerk in which the public body serves and the required public notice for a state public body shall be posted in the office of the secretary of state.

Sec. 5. (1) A meeting of a public body shall not be held unless public notice is given as provided in this section by a person designated by the public body.

(2) For regular meetings of a public body, there shall be posted within 10 days after the first meeting of the public body in each calendar or fiscal year a public notice stating the dates, times, and places of its regular meetings.

(3) If there is a change in the schedule of regular meetings of a public body, there shall be posted within 3 days after the meeting at which the change is made, a public notice stating the new dates, times, and places of its regular meetings.

(4) For a rescheduled regular or a special meeting of a public body, a public notice stating the date, time, and place of the meeting shall be posted at least 18 hours before the meeting. The requirement of 18 hour notice shall not apply to special meetings of subcommittees.

(5) A meeting of a public body which is recessed for more than 36 hours shall be reconvened only after public notice, which is equivalent to that required under subsection (4) has been posted. If either house of the state legislature is adjourned or recessed for less than 18 hours, the notice provisions of subsection (4) are not applicable. Nothing in this section shall bar a public body from meeting in emergency session in the event of a severe and imminent threat to the health, safety, or welfare of the public when 2/3 of the

members serving on the body decide that delay would be detrimental to efforts to lessen or respond to the threat.

Sec. 6. (1) Upon the written request of an individual, organization, firm, or corporation, and upon the requesting party's payment of a yearly fee of not more than the reasonable estimated cost for printing and postage of such notices, a public body shall send to the requesting party by first class mail a copy of any notice required to be posted pursuant to section 5(2) to (5).

(2) Upon written request, a public body, at the same time a public notice of a meeting is posted pursuant to section 5, shall provide a copy of the public notice of that meeting to any newspaper published in the state and to any radio and television station located in the state, free of charge.

Sec. 7. (1) A 2/3 roll call vote of members elected or appointed and serving shall be required to call a closed session, except for the closed sessions permitted under section 8(a), (b), (c), and (g). The roll call vote and the purpose or purposes for calling the closed session shall be entered into the minutes of the meeting at which the vote is taken.

(2) A separate set of minutes shall be taken by the clerk or the designated secretary of the public body at the closed session. These minutes shall be retained by the clerk of the public body, shall not be available to the public, and shall only be disclosed if required by a civil action filed under section 10, 11, or 13. These minutes may be destroyed 1 year and 1 day after approval of the minutes of the regular meeting at which the closed session was approved.

Sec. 8. A public body may meet in closed session only for the following purposes:

(a) To consider the dismissal, suspension, or disciplining of, or to hear complaints or charges brought against, a public officer, employee, staff member, or individual agent, when the named person requests a closed hearing.

(b) To consider the dismissal, suspension, or disciplining of a student when the public body is part of the school district, intermediate school district, or institution of higher education which the student is attending, when the student or the student's parent or guardian requests a closed hearing.

(c) For strategy and negotiation sessions connected with the negotiation of a collective bargaining agreement when either negotiating party requests a closed hearing.

(d) To consider the purchase or lease of real property up to the time an option to purchase or lease that real property is obtained.

(e) To consult with its attorney regarding trial or settlement strategy in connection with specific pending litigation, but only when an open meeting would have a detrimental financial effect on the litigating or settlement position of the public body.

(f) To review the specific contents of an application for employment or appointment to a public office when the candidate requests that the application remain confidential. However, all interviews by a public body for employment or appointment to a public office shall be held in an open meeting pursuant to this act.

(g) Partisan caucuses of members of the state legislature.

(h) To consider material exempt from discussion or disclosure by state or federal statute.

Sec. 9. (1) Each public body shall keep minutes of each meeting showing the date, time, place, members present, members absent, any decisions made at a meeting open to the public, and the purpose or purposes for which a closed session is held. The minutes shall include all roll call votes taken at the meeting.

(2) Minutes shall be public records open to public inspection and shall be available at the address designated on posted public notices pursuant to section 4. Copies of the minutes shall be available to the public at the reasonable estimated cost for printing and copying.

(3) Proposed minutes shall be available for public inspection not more than 8 business days after the meeting to which the minutes refer. Approved minutes shall be available for public inspection not later than 5 business days after the meeting at which the minutes are approved by the public body.

Sec. 10. (1) Decisions of a public body shall be presumed to have been adopted in compliance with the requirements of this act. The attorney general, the prosecuting attorney of the county in which the public body serves, or any person may commence a civil action in the circuit court to challenge the validity of a decision of a public body made in violation of this act.

(2) A decision made by a public body may be invalidated if the public body has not complied with the requirements of section 3(1), (2), and (3) in making the decision or if failure to give notice in accordance

with section 5 has interfered with substantial compliance with section 3(1), (2), and (3) and the court finds that the noncompliance or failure has impaired the rights of the public under this act.

(3) The circuit court shall not have jurisdiction to invalidate a decision of a public body for a violation of this act unless an action is commenced pursuant to this section within the following specified period of time:

(a) Within 60 days after the approved minutes are made available to the public by the public body except as otherwise provided in subdivision (b).

(b) If the decision involves the approval of contracts, the receipt or acceptance of bids, the making of assessments, the procedures pertaining to the issuance of bonds or other evidences of indebtedness, or the submission of a borrowing proposal to the electors, within 30 days after the approved minutes are made available to the public pursuant to that decision.

(4) Venue for an action under this section shall be any county in which a local public body serves or, if the decision of a state public body is at issue, in Ingham county.

(5) In any case where an action has been initiated to invalidate a decision of a public body on the ground that it was not taken in conformity with the requirements of this act, the public body may, without being deemed to make any admission contrary to its interest, reenact the disputed decision in conformity with this act. A decision reenacted in this manner shall be effective from the date of reenactment and shall not be declared invalid by reason of a deficiency in the procedure used for its initial enactment.

Sec. 11. (1) If a public body is not complying with this act, the attorney general, prosecuting attorney of the county in which the public body serves, or a person may commence a civil action to compel compliance or to enjoin further noncompliance with this act.

(2) An action for injunctive relief against a local public body shall be commenced in the circuit court, and venue is proper in any county in which the public body serves. An action for an injunction against a state public body shall be commenced in the circuit court and venue is proper in any county in which the public body has its principal office, or in Ingham county. If a person commences an action for injunctive relief, that person shall not be required to post security as a condition for obtaining a preliminary injunction or a temporary restraining order.

(3) An action for mandamus against a public body under this act shall be commenced in the court of appeals.

(4) If a public body is not complying with this act, and a person commences a civil action against the public body for injunctive relief to compel compliance or to enjoin further noncompliance with the act and succeeds in obtaining relief in the action, the person shall recover court costs and actual attorney fees for the action.

Sec. 12. (1) A public official who intentionally violates this act is guilty of a misdemeanor punishable by a fine of not more than $1,000.00.

(2) A public official who is convicted of intentionally violating a provision of this act for a second time within the same term shall be guilty of a misdemeanor and shall be fined not more than $2,000.00, or imprisoned for not more than 1 year, or both.

Sec. 13. (1) A public official who intentionally violates this act shall be personally liable in a civil action for actual and exemplary damages of not more than $500.00 total, plus court costs and actual attorney fees to a person or group of persons bringing the action.

(2) Not more than 1 action under this section shall be brought against a public official for a single meeting. An action under this section shall be commenced within 180 days after the date of the violation which gives rise to the cause of action.

(3) An action for damages under this section may be joined with an action for injunctive or exemplary relief under section 11.

Sec. 14. Act No. 261 of the Public Acts of 1968, being sections 15.251 to 15.253 of the Compiled Laws of 1970, is repealed.

Sec. 15. This act shall take effect January 1, 1977.

APPENDIX C

TRANSCRIPT OF LANSING CITY COUNCIL MEETING OF OCTOBER 27, 1975 RELATING TO PASSAGE OF RULE 49

TRANSCRIPT OF LANSING CITY COUNCIL

MEETING OF OCTOBER 27, 1975

RELATING TO PASSAGE OF RULE 49

City Clerk Theo Fulton: "By Councilman Belen--Whereas . . ."

Councilman Lucile Belen: "Mr. Mayor."

Mayor Gerald Graves: "Councilman Belen."

Belen: "This is the amendment to the council rules which provide for executive sessions for consideration of board appointments, personnel matters, purchasing of real estate and matters of that type. This is being recommended by the city attorney and has been prepared by him for addition to our council rules. I would like to move they be considered read and they be approved."

Unidentified councilman: "Support."

Graves: "Moved and supported that the resolution amending the council rules be considered read and an affirmative roll be attached."

Councilman James Blair: "Mr. Mayor."

Graves: "Councilman Blair."

Blair: "Just receiving a copy of this new rules change this afternoon, I haven't had a chance to study it as thoroughly as I hoped I would be able to. But in reading it this evening and during supper, I did come up with many questions which I feel I'd like to have answered possibly before we vote on this.

"As being a person who's asked for open meetings and trying to get this council to go on record as keeping open meetings, I do not want to do anything that would stop having a rule being put on the council books that would help us have these open meetings.

"But I really feel this is a half attempt at open meetings. I have very many questions that have come up . . .

(Councilman Joel Ferguson coughs near a microphone) . . . Are you through, Mr. Ferguson?"

Councilman Joel Ferguson: "Okay."

Blair: "I have had many questions that have come up while I have been reading it, such as the first section, it says 'council shall meet in executive session only for the following purposes.' Does this mean official meetings of the city council or does it mean unofficial meetings of the city council when more than a quorum of them are together?

"Does this mean that this is council committees, or does this just mean the committee of the whole? Many of our committees of council have just as much control over events in their committee sessions as the council does as a whole. Are we actually talking about forms of councils or are we just talking of official city council meetings? Some other questions I've come up with.

"I really haven't had a chance to compare this open meeting rule with other open meetings laws of other communities. I was hoping that before we saw . . . ah . . . when we saw this, that we would have a chance to check with the Municipal League and have some other open meetings rules that we could look at.

"I'd like to know in what areas that there are penalties for violations. It says that the council shall not do it but there seems to be no penalties or any action if such a meeting goes on. I think that the whole idea of a code of ethics--the ethics of the council as it has to do with open meetings--needs a lot more discussion before we pass this type of a piece of a council rule change. I think that more time needs to be spent on it and I think that if we really want to have open meetings up here, that this thing needs a lot more looking into than I think we've really had a chance. I'd like to have a whole lot more discussion on it. I would like to have this council send this to the committee of the whole for one week so that I could have some time to look at this thing over a little better because, again, I didn't receive it. I had to request a copy from the city clerk this afternoon at about 2 o'clock."

Belen: "Mr. Mayor."

Graves: "Councilman Belen."

Belen: "I would like to point out to Mr. Blair that you got a copy of the opinion of the city attorney over a week ago and this contains the same language as the opinion. Now, if you didn't read it in one week, then, perhaps you wouldn't read it in another week."

Councilman John Anas: "Mr. Mayor."

Graves: "Councilman Anas."

Anas: "Mr. Mayor. Mr. Blair has been with us now almost two years. I can't remember too many meetings where we have attempted to have a so-called closed session. And, prior to that time, the nine years prior to that time, we've had very few so-called closed sessions. Sometimes they're referred to as secret meetings, incorrectly, because I defy anybody in this city to have a so-called secret meeting and get away with it. There's just no such animal.

"Very frankly, I can think of no particular meeting where we have had occasion to have a so-called closed meeting where we were in violation of these precepts established or set down by (city attorney) Mr. (Peter) Houk. And I don't know where people keep getting the notion that the Lansing City Council has closed meetings or meetings where the public is not entitled to have the information and is not entitled to be in attendance because this just doesn't occur that frequently. I think it's too bad we have to keep running on this subject because it isn't an area where

we of this council violate the basic precepts of governmental body meetings and hold 'em in public and I think it's too bad to have to keep enlarging and talk and when we make so much to do about this because there isn't that much to do about it."

Ferguson: "Mr. Mayor."

Graves: "Councilman Ferguson."

Ferguson: "I almost agree with Mr. Anas. I think Mr. Blair has been here in the council for two years although he hasn't been with us. I might think that it's just totally impossible to have a secret meeting with Mr. Blair here. I don't know why he keeps beating us over the head saying that we've had secret meetings because that is not been the think that has happened. We've had some meetings where, in error, we could have expanded on a subject longer than we should have, but, the council has never intentionally had secret meetings to do the city's business. In fact, every action that we take has to be voted upon before the full council.

"The problems we have right now are Mr. Blair wants to dialogue this alleged secret meetings matter as he runs interference for other individuals. And what's really hurting is we don't end up talking about the real issues and the real problems of the city.

"So, Mr. Mayor, I'd like to move to question."

Blair: "Mr. Mayor."

Graves: "The question's been moved, is there a support?"

Several: "Support."

Graves: "The question's been moved. Proceed with the vote. The question's on the motion by Councilman Ferguson and we shall vote without further debate. All those in favor say aye."

Several: "Aye."

Graves: "Opposed, say no."

Blair: "No."

Graves: "Clerk will call the roll."

Fulton: "Councilman Anas."

Anas: "Aye."

Fulton: "Belen."

Belen: "Aye."

Fulton: "Blair."

Blair: "No."

Fulton: "Brenke."

Brenke: "Aye."

Fulton: "Ferguson."

Ferguson: "Aye."

Fulton: "Gunther."

Gunther: "Aye."

Fulton: "May."

May: "Aye."

Fulton: "McKane."

McKane: "Aye."

Fulton: "Seven ayes and one nay."

Graves: "Question's on the motion by Councilman Lucile Belen. Resolution be considered read, affirmative

roll be attached. All those in favor say aye."

Several: "Aye."

Graves: "Opposed, say no."

Blair: "No."

Graves: "Clerk will call the roll."

Fulton: "Councilman Anas."

Anas: "Aye."

Fulton: "Belen."

Belen: "Aye."

Fulton: "Blair."

Blair: "Aye--No!"

(Laughter)

Fulton: "Brenke."

Brenke: "Aye."

Fulton: "Ferguson."

Ferguson: "Aye."

Fulton: "Gunther."

Gunther: "Aye."

Fulton: "May."

May: "Aye."

Fulton: "McKane."

McKane: "Aye."

Fulton: "Seven ayes, one nay."

Graves: "I will say that Councilman Ferguson made a tremendous story of no secret meetings when he knows it's not fact and I know it's not fact."

Unidentified: "That's correct."

Graves: "Councilman Ferguson, you've been at meetings that we haven't even been invited to. (Laughter) And for you to sit here and say there have been no secret meetings is an untruth. And, I'll ask you if you were at the meeting when members of this body, when I was first elected, hired a private detective agency to look into my background with help from a TV station and a newspaper. And this council, the night I took office, paid the bill. Were you at the meeting?"

Ferguson: "I'm not aware of such a meeting."

Belen: "I'm not aware of such a meeting."

Graves: All right, it should come out in the future hearings on WJIM on competence."

Ferguson: "Mr. Mayor, what we should have is a grand jury to find out why we haven't had a grand jury."

Graves: "Mr. Ferguson, I'll produce you the bills."

Belen: "Well, there's certainly no (inaudible)."

Graves: "And Ferguson voted for those bills."

Anas: "It was not a council meeting, sir."

Graves: "That council session--if there are more than five members at a meeting somewhere else--you don't call it a council session? Well, I think Mr. Blair is on the right track because I haven't been at meetings or even been notified of some meetings. And I think that charter says the mayor is a member of

every board and every committee."

Unidentified: "That's right."

Graves: "I've been notified some days the same day of the meeting; I've been notified after we've been here and nobody showed up that the council committee has been changed to some other location. And I don't look kindly on it. For a man like Mr. Ferguson, who knows that bill was paid out of city funds to a Grand Rapids private detective agency, to sit here and say that 'Mr. Blair, you're wrong,' well, that's an untruth, Mr. Ferguson, and I will not accept you calling that man wrong when I know personally in my heart he's right."

Ferguson: "Mr. Mayor. Senator McCarthy, I know that he used to, you know, I, uh, he used to do it that way. But I think you owe it to the news media and to everyone here to produce copies of those bills that councilmen Ferguson, Belen, Anas, May, who were on the council at that time voted for. I think that . . ."

Graves: "They will be produced."

Ferguson: "They certainly should be. What's just happened here illustrates what I said earlier in the meeting that this whole dialogue on alleged secret meetings is a political ploy to run interference for certain individuals. And I don't feel that it could be more graphically illustrated than by this latest outburst of this thing that allegedly happened. That the mayor speaks forth with great authority and, being the mayor

of the city, has access to these records and everything else where we voted on the transfer and now he thinks he knows (inaudible) happened and can't produce the documents."

Graves: "I didn't say I couldn't produce them, Mr. Ferguson. They were produced at a federal meeting and they will be be up at another federal meeting shortly.

Ferguson: "Mr. Mayor. That's the other point I said earlier. I think what we should have in this city is a grand jury to find out why we haven't had a grand jury."

Graves: "It would be interresting. When a man can buy a major apartment house with repairs for $300,000 as a member of this council, forward a communication to a law firm in Washington, be advised that he can buy it back in another corporation for $750,000, and I'll produce that letter, Mr. Ferguson. It was addressed to you. You do own the Embassy Apartments at this time, don't you? I'll produce that for you this week. Addressed from a Washington law firm."

Ferguson: "Fine."

Graves: "All right."

Ferguson: "And the money too. I'd like to spend some of it, sir.

Blair: "Mr. Mayor."

Graves: "Councilman Blair."

Blair: "I think that it's very unfortunate that remarks were made that my reason for opposing this council rule is because of the election coming up. I think that

this, by its own admission one week before the election, is a half-hearted attempt to try to snow the public into thinking that the council has open meetings. I can't say that I would not support this, but when it's attempted to bring these things in, to shuffle them in at the last minute on you, something of this magnitude, which our council rules were developed over very many years, and to not have a chance to have these things checked by our municipal league and by other governmental agencies around and compared to some of the bills that are in the legislature with open meetings, I think, is very dangerous.

Graves: "In regard to the investigation, Mr. Ferguson, I happened to see a copy of the report and I've seen the account numbers. Insofar as secrecy goes, I'd like to ask Mrs. (Jacqueline) Warr (former Model Cities director and currently heading Community Development) signed a purchase order for church pews in Henderson, Texas before the approval went through and they were delivered? Can you advise me of that while we're talking about secretness?

Warr: "Mr. Mayor, you are also aware of the fact that that has been investigated by the controller's office and I would not sign purchase orders for any other agency (inaudible).

Graves: "Your name is on the purchase order, m'am."

Warr: "Purchase orders, as they are sent through in terms of requisitions are co-signed. I would not sign anything that the city controller doesn't sign, nor have I ever."

Graves: "We'll produce those for you."

Warr: "Fine."

Graves: "Clerk will read."

Fulton: "Resolutions approving the following contracts . . ."

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Interview with Jack Gunther, Lansing City Councilman, Nov. 1, 1976.

Conversation with Mary Haney, Lansing hotel and restaurant owner, Feb. 10, 1976.

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