



EDUCATION PRACTICE

ALERT

EXECUTIVE SESSIONS FOR LITIGATION UNDER THE PA SUNSHINE ACT

In what should have been an obvious decision, the PA Commonwealth Court recently gave guidance to public bodies holding executive sessions related to litigation matters. The case was *Trib Total Media, Inc. v. Highlands School District*, 1588 C.D. 2009 (Pa. Cmwlth.).

The facts were fairly odd. The Highlands School District's board held an executive session to discuss tax assessment litigation. This is a perfectly legitimate use of an executive session. What the court found made it not so legitimate was that in addition to their attorney, the Board invited the owner of the tax parcels -- otherwise known as the adverse party.

A board is supposed to hold all meetings in the public eye so that the public can remain informed on the business of the board. An executive session excludes the public and is permitted only in limited situations.

The purpose of an executive session for litigation is to discuss strategy and facts that, if they

became known to the adverse party, could impact on the District's position during that litigation. A board is permitted to invite others into an executive session if doing so will further the aims of such an executive session, but as you see there are clearly limits on who can be invited when the board is discussing litigation.

In this case, what the court found was that by including the adverse party in the executive session, the board made it pointless (and a Sunshine violation) to exclude the public. The court recommended that if the board had simply wanted to negotiate, it should have followed normal procedures for it, by giving a negotiator parameters and authority to meet with the tax parcel owners. Discussions in executive session on the negotiations toward settlement would then have been permissible.

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