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Government meetings regularly held behind closed doors  
By Jennifer Peter  
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Six months ago, following the adjournment of its regular meeting, the Stafford County School Board met in a back room, privately and without notice, to discuss a possible site for a new school.

The public heard about this discussion, which is of great importance in the quickly growing county, only because a reporter stumbled upon it after following three School Board members down a hallway.

In Chesapeake this August, the board of a museum that is operated with public money voted to eject a reporter and conduct the meeting without scrutiny.

"All those in favor of asking this news person to leave, and not having another headline in the paper, raise their hands," the board chairman said.

Virginia's open-meeting law says a meeting of three or more members of a public body must be held openly and with prior public notice. Governments can close the door only after openly voting to do so and only to discuss specific topics designated by the law.

Keeping headlines out of the newspaper is not one of them.

Councils, boards and public authorities across the state routinely retreat behind closed doors to discuss public business. Unless citizens or their proxies, the media, attend the regular meeting, the public may not even be aware the private sessions occur.

Legal under certain circumstances but never required, executive sessions are intended to preserve a locality's bargaining position on issues that could cost the taxpayers money or to protect someone's privacy.

While many of the closed sessions comply with the letter and the spirit of the state's Freedom of Information law, others seem merely to be cloaked in the technicalities of legality.

There are 27 exemptions to the open meeting law, which also dictates that private meetings should be held only when absolutely necessary to serve the public good or protect a private reputation.

"Many things are being discussed in executive session simply to avoid the controversy of discussing it in open session," said state Sen. William Bolling, R-Hanover, a member of a subcommittee reviewing the Freedom of Information law. "The exemptions are much broader than they should be."

In Charlottesville, for example, a local newspaper, C-Ville Weekly, attacked the Redevelopment and Housing Authority for secretly discussing the forgiveness of a \$10 million loan to a local hotel.

To have this discussion, the authority referred to the exemption that allows for secret discussion of ``the condition, acquisition or use of real property.'' This exemption was intended to protect the city's bargaining position, and save the taxpayers' money, when buying or selling property.

In this case, taxpayers' money was at stake. The authority was not discussing the property, but the city's bank account.

The non-specific words ``use'' and ``condition'' have been interpreted to render legal nearly any kind of secret discussion of property.

In Fredericksburg, according to The Free Lance-Star newspaper, the City Council cited the economic development exemption of the law as a reason for secretly discussing the rezoning of hundreds of acres along the Rappahannock River for development as a tourist attraction.

The council used the exemption that allows for ``discussion of a prospective business . . . where no previous announcement has been made.'' In this case, the developer's identity, Silver Cos., is well known, but there has been no official ``announcement.'' Because of this, a development that will affect the entire city has been discussed only behind closed doors.

In Bedford County in August, the School Board tested out a portion of the law that allows for private discussion of legal issues.

The School Board was scheduled to discuss publicly a proposal to randomly test for drugs employees and students involved in extracurricular activities, according to the Lynchburg News & Advance newspaper.

Before the discussion could occur, the board, upon the advice of counsel, went into executive session but did not specifically state what it would be discussing.

While the board made no formal decision, it did not discuss the policy thereafter, due to the attorney's advice that doing so could be considered unconstitutional. Virginia's open meeting law states that no votes can be taken in executive session.

The Roanoke Times and The News & Advance lost a court challenge of the action, but the judge reprimanded the board for being too secretive.

While the exemption was designed to allow public bodies to discuss legal strategy, Circuit Judge James W. Updike Jr. said, it should not be construed to protect any discussion that the body wants to have with legal counsel.

``They could conduct all such business in closed session,'' Updike said.

While the legislative subcommittee is studying ways to address improper use of closed meetings, at least one City Council, which has frequently closed its sessions in the past, is trying to change its own rules.

The Chesapeake City Council spent almost 40 percent of its formal meetings in closed session between September 1997 and February. Discussions included the staffing level at the city jail, despite the fact that the



personnel exemption is supposed to apply only to specific individuals rather than budgetary issues.

Currently, however, the council's rules committee is reviewing its internal procedures to ensure that both the spirit and the letter of the law are served.

As part of this backlash, the council in September certified an executive session by a 5-4 vote after several members argued that the personnel exemption did not cover the matter to be discussed: the conduct of the council members themselves.

While it's unlikely the legislature or individual bodies could make rules that could prevent abuse, Updike shared some advice that could help governing bodies abide by the law.

``A word to the wise,'' he said in rendering his decision on the Bedford County case. ``Err on the side of informing the people. You work for them. You serve them.''

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