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PENNSYLVANIA DISTRICT ATTORNEYS ASSOCIATION

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SUNSHINE LAW GUIDANCE

We have been asked whether individuals might be prosecuted under Pennsylvania's Sunshine Act if, during the present COVID-19 emergency, individuals covered by the statute do not comply with each of its statutory requirements.

As an initial matter, please know that this document does not constitute legal advice, nor is it binding. The decision whether to prosecute an individual lies squarely within the province of the appropriate prosecutor with jurisdiction over the matter. Individuals with concerns should consult with those with whom they normally consult, or anyone else for that matter.

Because this is not a formal or binding legal document, we will not be providing an overly detailed analysis or recitation of the applicable law. Instead, we will provide some brief comments on the statute and its relevant exemptions, as well as some general common-sense thoughts given the emergency we all face.

As you know, section 714 of the Sunshine Act provides, among other things, that “[a]ny member of any agency who participates in a meeting with the intent and purpose by that member of violating this chapter commits a summary offense. . . .” But the law also permits political subdivisions included in a Governor’s declaration of disaster emergency to “exercise the powers vested under this section without regard to time-consuming procedures and formalities prescribed by law. . . .” *See* 35 Pa.C.S. § 7501(d). Such powers contemplated by this exception are specifically set forth in this subsection.

With all that said, the best advice we can provide is non-technical. We would recommend that when officials are not able to comply with the Act, they seek other ways of complying with the spirit of the law, which is to ensure that the public at large has an opportunity to view their government in action. This may be accomplished through conference calls, video chats, transcription of meetings or otherwise recording the meeting and making the recording publicly available or otherwise accessible.

Public participation pursuant to Section 710.1 is a necessity. Common-sense should also prevail here. There may be no singular way to meet this statutory requirement, but no doubt government officials working together can identify ways to permit their constituents to have a voice in a manner that is achievable given whatever technology and other methods of communication are available in their communities.

Last, one should ensure that any action that deviates from any applicable statutory provision is necessitated because of the emergency. What can happen in the ordinary course of business should happen in the ordinary course of business with full and complete transparency after the emergency has ended. But that which must be done immediately (even if not related to the pandemic, but nonetheless still needs to be done), or that which must be done in order to respond to the emergency, would seem to constitute situations where appropriate deviation would comport with the spirit of the law and its exceptions.

Although this document is informal and non-binding, we hope it provides both some guidance and suggestions for navigating through these difficult and challenging times.