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# Important Sunshine Law Update: November 2023

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On November 8, 2023, in *Coleman v. Parkland School District*, 2023 WL 7371857, the Commonwealth Court determined that an agency may not amend a meeting agenda to address any matter other than to address (1) emergencies, (2) business which arose within 24 hours of the meeting and which is de minimis or does not involve the expenditure of funds or entering into contracts, and (3) business brought by a resident or taxpayer so long as the action is to refer the matter to staff for further review.

**The Court's decision clarifies that no other business, unless it falls into the above categories, may be amended into an agenda.**

As you may remember, Act 65 of 2021 amended the Sunshine Act to require agencies to post meeting agendas at least 24 hours in advance of any meeting and to prohibit agencies from taking official action on any matter not included on the agenda, unless the agenda was properly amended.

Prior to this decision, it had been suggested that an agency could amend the agenda to address the three exceptions identified above, but also to add a matter of new business so long as there was an affirmative and majority vote to do so, the reason for the change in the agenda was announced prior to the vote, the amended agenda was posted on the agency website and principal office no later than the first business day following the meeting, and the meeting minutes reflected the matter of new business, as well as the announced reasons for the addition.

However, the Court's decision in *Coleman*, has clarified that there is no "catch all exception", and an agency may only amend its agenda to address the following three exceptions (the "Three Exceptions"):

1. A "matter of agency business relating to a real or potential emergency involving a clear and present danger to life or property." 65 Pa.C.S. § 712.1(b);
2. A matter that "arises or is brought to the attention of the agency within the 24-hour period prior to the meeting" and "the matter is de minimis in nature and does not involve the expenditure of funds or entering in to a contract or agreement by the agency." 65 Pa.C.S. § 712.1(c); or
3. A matter brought to the attention of the agency by "a resident or taxpayer" during a meeting. Under this exception, the agency may "take official action to refer the matter to staff, if applicable, for the purpose of researching the matter for inclusion on the agenda of a future meeting, or, if the matter is de minimis in nature and does not involve the expenditure of funds or entering into a contract or agreement, the agency may take official action on the matter." 65 Pa.C.S. 712.1(d).

The Court further determined that the subsection in Act 65 entitled "Changes to Agenda", which was previously interpreted to be a catchall, does not provide for an additional path to amend the agenda for any other matters of new business. Rather, the Court found that it merely reflects the procedure to be used when amending the agenda to address business related to one of the Three Exceptions. As a reminder, those procedures, the "Amendment Procedures," include:

1. An agency may address a matter of new business related to the Three Exceptions upon a “majority vote of the individuals present and voting during the conduct of a meeting” to amend the agenda. The agency may take official action on the matter after the agenda has been amended, and after the reasons to change the agenda are announced. 65 Pa.C.S. § 712.1(e)(1).
2. After making an amendment, the agency must then post the amended agenda on its website and principal office location no later than the first business day following the meeting. 65 Pa.C.S. § 712.1(e)(1).
3. “[T]he minutes of the meeting shall reflect the substance of the matter added, the vote on the addition, and the announced reasons for the addition.” 65 Pa.C.S. § 712.1(f).

Accordingly, an agency may only amend its posted agenda if the amendment addresses one of the Three Exceptions, and the agency must use the expressed Amendment Procedures to amend the agenda. Unless the matter of new business meets one of the Three Exceptions, you may NOT add any item of new business to that meeting’s agenda.

**We are bringing this to your attention as it is an important change to how Act 65 and the Sunshine Law have been interpreted by the Courts.**

**Should you have any questions, please do not hesitate to reach out to your named solicitor or any other member of the Government Practices Division at Knox Law, or call us at 814-459-2800.**

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