

Erie County Charter Revision Commission
Proposed Amendment to Form & Scope Committee Supplementary
Report—Article 1

Submitted by Commissioner John Maggiore

Proposed Amendment

Strike the following language from the proposed section 101c:

“A political party caucus or conference of the legislature, regardless of majority or minority status, at which public business is conducted shall be open to the public.”

Justification

1. *The proposed language does not apply to any current or recent legislative behavior.*
 - a. The majority party caucus is already open to the press and public.
 - b. In a case decided earlier this year, Supreme Court Justice John P. Lane ruled two closed-door meetings involving legislators that took place in 2004 and 2005 were illegal under existing law. The proposed language would not make those meetings any more illegal. That Justice Lane did not impose sanctions on the participants in those meetings is irrelevant to the question of whether or not existing law applies to the actual behavior that took place. Further, Justice Lane ruled that the violation occurred due to a misunderstanding of the law, rather than a persistent pattern of willful violation. The rest of the proposed section 101c, establishing an open meetings officer, should help avert future misunderstandings.
 - c. Another closed door meeting took place between county legislators and state legislators that was characterized in a *Buffalo News* story as in violation of the open meetings law (Heaney, James “Public's Right To Know Is Getting Short Shrift,” 3/26/06). If the meeting was not already covered by existing law, the proposed language would not apply because the bipartisan meeting was not a caucus.
 - d. Reported closed door meetings of small groups of legislators, convened so as to avoid the open meetings law, would still not be covered by the existing language.
2. *The proposed language would not achieve its stated purpose of informing the public.*
 - a. If this language actually changed anything, it would likely suppress discussion rather than shed light on it. We remember “Schrodinger's Cat” and the popular understanding of the “Heisenberg uncertainty principle” from physics class. According to Dr. Alan Rosenthal of Rutgers University’s Eagleton Institute of Politics, perhaps the nation’s foremost

expert on state legislatures, when Florida state legislative committee meetings took place behind closed doors, all members participated. After new sunshine laws opened such meetings to the public, they became pro-forma, with the real decision making taking place between a smaller number of decision makers (including staff and legislative leaders) meeting behind the scenes. The effect was both to make the actual decision making process more secretive and involving fewer elected representatives in a meaningful way. My own observation of the New York State legislature is that closed-door caucus meetings are characterized by far more frank and open discussion among a wider array of lawmakers than do the pro-forma official floor debates. Were cameras to be introduced in those caucus meetings, they too would likely become pro-forma. The open discussions within a large gathering of legislators would likely cease to exist.

- b. Currently within Erie County, many of the most important policy decisions already are made between small groups of public officials, such as the county executive and his staff. This caucus language would not open meetings between the county executive and the proposed county manager, nor would it apply to discussions between the executive and individual legislators.
 - c. Rumors of “deals” involving legislators being “bought off” for their votes are not said to have taken place in closed door caucus meetings for all the other legislators to see, but instead murkily hatched between individuals or very small groups. The idea that individual legislators would agree to a special arrangement in exchange for voting a particular way in front of his or her colleagues defies common sense.
 - d. Legislators can actually use the presence of cameras to promulgate an inaccurate picture of their thinking. No law can actually get into the minds of legislators.
 - e. Since malapropos, gaffes, sound-bites and hyperbole are more likely to make the news than meaningful explanations of nuanced thought, the news media is not likely to use its freedom to interpret what is actually going on any more than it does already. Think back to our own experiences with media coverage of the county manager proposal, which focused more on someone’s off-hand suggested salary than anything actually considered by this body. This is not to suggest that the policymaking process should be secret, but rather that media access does not guarantee an informed public and indeed frequently works against that goal.
3. *While the proposed caucus language does not address any actual problem, our other proposed charter changes address recent instances where information that should be public was hidden. We have already voted in favor of language:*
- a. ... strengthening the executive’s requirement to issue monthly budget monitoring reports. BMRs had been a rarity in recent years.

