Mr. William G. Owen  
Secretary of the Corporation  
212 College Hall  
University of Pennsylvania  
Philadelphia, Pennsylvania 19174

Dear Bill:

You have requested that I confirm the advice I have previously given you with respect to the application of the so-called sunshine law at the University by rendering you a formal written opinion on that subject.

Section 1 of the Act contains the following definitions:

"Agency" means...the board of trustees of all State-aided colleges and universities...

"Formal action" means the taking of any vote on any resolution, rule, order, motion, regulation or ordinance or the setting of any official policy...

Section 2 of the Act then provides:

The meetings or hearings of every agency at which formal action is scheduled or taken are public meetings and shall be open to the public at all times. No formal action shall be valid unless such formal action is taken during a public meeting.

We have no doubt that the University is "State-aided" within the meaning of §1 of the Act, and that the University's Board of Trustees is an "agency" subject to the Act's requirements. Meetings of the Board of Trustees at which "formal action" is taken should therefore be open to the public.

The more difficult question is whether the meetings of the committees to whom the Board of Trustees has delegated certain responsibilities must also be public. We are aware of the argument that because the Act defines the "agency" as the Board of Trustees of the University, the requirements of §2 apply only to meetings of the Board. However, we are not persuaded by this literal approach, particularly in view of other language in these provisions.

The definition of "formal action" contained in §1 is not limited to such action by an "agency", and the second sentence of §2 provides that no such formal actions shall be valid unless taken at a public meeting. We interpret these provisions to mean that when the Trustees delegate to any committee the authority to undertake "formal action" -- that is, to make final and binding decisions not subject to review and approval or ratification by the Board of Trustees the validity of which is significant -- the meetings of the committee at which such action is taken must also be public.

It is our understanding that the only committee to which the Trustees have delegated such authority is the Executive Board, which carries out the functions of
the Trustees between their plenary meetings. We believe that it would be prudent to make public all meetings of the Executive Board at which "formal action", as defined above, is taken on behalf of the Board.

We believe that the Board of Trustees and the Executive Board may also hold informal discussion sessions, which are closed to the public, as long as these do not interrupt the public meetings in violation of §3 of the Act, and as long as they are not used to conduct private deliberations concerning specific contemplated formal actions which the Act requires to be taken at a public meeting.

It is our understanding that other committees do not take "formal action" as does the Executive Board. Rather, their decisions concerning policy matters and the trans- action of business within their respective areas of concern are submitted to the Executive Board or the Board of Trustees for review and adoption or ratification. Under these circumstances, we believe that as long as the actions of the Executive Board and the Board of Trustees with respect to these matters are taken at public meetings, the preliminary actions of these various committees need not be.

We call your attention to the following provisions of the Act which are briefly summarized.

Section 3 permits an executive session during the course of a public meeting, for a period not to exceed thirty minutes, for the purpose of considering disciplinary proceedings or charges brought against an employee or considering actions with respect to labor negotiations.

Section 4 requires the minutes of a public meeting to be taken and promptly recorded and makes them a public record available for examination and inspection by citizens.

Section 5 requires public notice of all public meetings of an agency to be given in the following manner:

Public notice of regularly scheduled meetings for the calendar or fiscal year must be given at least three days prior to the time of the first regularly scheduled meeting in the case of regular meetings and, except in cases of emergency, at least 24 hours prior to the time of any special or re-scheduled meeting.

In the case of an emergency involving a clear and present danger to the life or property, the meeting need not be public and no notice need be given.

Copies of the public notice must be provided on request to any newspaper or radio or television station published or broadcasting into the political subdivision in which the meeting is held. Also, a copy of the public notice must be given any individual who requests it if he supplies a stamped, self-addressed envelope prior to the meeting.

Section 6 permits an agency to adopt rules and reg- ulations necessary for the conduct of its meetings and permits the agency by a majority vote to authorize the presiding officer to enforce such rules and regulations to the extent necessary to preserve order.
Open Stated Meeting of the Trustees, October 25, 1974

We believe that such rules and regulations could properly provide that members of the public present at the meeting are not entitled to speak or ask questions or otherwise interrupt the ordinary conduct of business.

Section 8 provides that intentional violation of the Act by any member of an agency is a summary offense subject to a $100. fine. However, the principal sanction of the Act is the provision in §2 that no "formal action" of an agency shall be valid unless taken during a public meeting.

As you are aware, the Act became effective September 17, 1974.

Sincerely,

John Ames Ballard
Rule Concerning Attendance Of The Public At Meetings Of The University Trustees

1. Meetings To Be Open. The meetings of the Board of Trustees and of the Executive Board shall be open to the public to the extent required by the Act of July 19, 1974, No. 175.

The three regular meetings of the Trustees are normally in October, January and May of each year. Three action meetings of the Executive Board will be held at times when regular meetings of the Trustees are not held. Announcements of these meetings will be published in accordance with the law.

2. Public Attendance To Be Subject To Reasonable Numbers. The number of the members of the public permitted to attend any such open meeting of the Board of Trustees and the Executive Board shall be limited to such number as can be reasonably accommodated in the room or hall where the meeting is held without interference with the conduct of the meeting. The determination of such number shall be made by the presiding officer of the meeting.

3. Public Attendance To Be For Purpose Of Observation. Members of the public shall be admitted to such meetings for the purpose of observation only; they shall not be permitted to participate in the meeting in any way except to the extent specifically invited to do so by the presiding officer. No member of the public attending any such open meeting shall in any fashion interrupt, interfere with, obstruct, disturb or disrupt the conduct of such meeting.

4. Audio-visual Equipment And Displays. No member of the public shall bring into the meeting room of any such open meeting any photography, moving picture or sound recording equipment, nor any sign, placard, poster, banner or other visual display.

5. Enforcement. The presiding officer may take any action deemed necessary and appropriate to enforce the above.