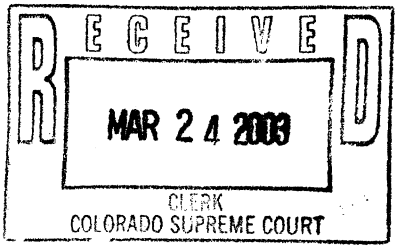
SUPREME COURT, STATE OF COLORADO Two East Fourteenth Avenue Denver, CO 80203	
Certiorari to the Court of Appeals, 01 CA 1171 Opinion by Judge Roy; Marquez and Erickson, JJ., concurring District Court, Costilla County, 00 CV 8 The Honorable O. John Kuenhold, Judge	
BOARD OF COUNTY COMMISSIONERS, COSTILLA COUNTY, COLORADO, Petitioner v. COSTILLA COUNTY CONSERVANCY DISTRICT and MICHAEL MCGOWAN, Respondent	
Attorney for *Amicus Curiae*: Geoffrey T. Wilson, #11574 COLORADO MUNICIPAL LEAGUE 1144 Sherman Street Denver, CO 80203-2207 Telephone: 303.831.6411 Fax: 303.860-8175	COURT USE ONLY CASE NO. 02 SC 743

BRIEF OF THE COLORADO MUNICIPAL LEAGUE AS *AMICUS CURIAE*



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COMES NOW, the Colorado Municipal League (the "League") by its undersigned counsel, pursuant to Rule 29, Colo. App. R., and files this brief as *amicus curiae* in support of Petitioner, the Board of County Commissioners of Costilla County (the "County").

STATEMENT OF ISSUES ON APPEAL

As announced by this Court in its Order granting certiorari review, the issues on appeal are:

Whether the Colorado Court of Appeals erred in concluding that the Board of County Commissioners of Costilla County violated the Open Meetings Law when it failed to give public notice of a gathering attended by two Commissioners which was convened by the Colorado Department of Public Health and Environment (CDPHE) and a private mining company for the purpose of providing information on what was required of the mining company in order to bring it into compliance with the regulations adopted by CDPHE in its enforcement of the Colorado Water Quality Act.

Whether the Court of Appeals erred in concluding that the Colorado Open Meetings Act requires a local public body to give public notice of any gathering when a quorum of that public body is in attendance regardless of where the gathering is held, who convenes the gathering, what matters are discussed, the degree of participation by the local public body and whether or not the local public body has any authority to take any formal action on the matters which are the subject of the gathering.

STATEMENT OF FACTS AND OF THE CASE

The Colorado Municipal League hereby adopts and incorporates by reference the statement of facts and of the case in the opening brief of the County.

SUMMARY OF ARGUMENT

The Court of Appeals has decided in this case that the Colorado Open Meetings Act, § 24-6-401 *et seq.*, C.R.S., ("the "Act") requires a local public body to give full and timely public notice of any gathering to which a majority or quorum of the body has been invited, if information that may bear on public business of the body may be provided, regardless of whether members of the public body will themselves be discussing public business at the gathering.

It is neither necessary nor advisable to interpret the Act so broadly. The purpose of the Act is to allow public access to the deliberative and decisional stages of the public policy formation process, so the public may witness "the discussions, the motivations, the policy agreements and other considerations" employed by those officials in the formation of public policy. *Bagby v. School District No. 1*, 528 P.2d 1299, 1302 (Colo. 1974) The Act is not intended to require public notice of every seminar, site visit, meeting, or community event to which members of public bodies may be invited and which may provide information or experiences that could bear upon their subsequent decision making. This extension of the public notice requirement beyond the deliberative and decision making stages of the public policy process, and to the information gathering, or "collective inquiry" stage of the process will be difficult to apply, unduly burdensome and potentially counterproductive, in terms of meaningful public notice.

In order to comply with the Court of Appeals' requirement, local public body members and their administrative staff would need to collaborate on at least a daily basis to determine: which members have been invited to which community events; whether the member was invited in his or her "official capacity"; the precise nature of those events and whether any information will be presented that may be related in some fashion to business that may come before the local public body; and how many members of the body

have been invited or might otherwise attend the event. The practical consequence of such a rule is that all manner of gatherings will likely be posted as "meetings" of the local public body, with the public left to sift through these notices in a quest to determine which gathering will actually involve "discussion of public business" by the members of the public body itself.

A more sensible and accurate interpretation of the public notice provisions of the Act would be to require full and timely notice to the public of all gatherings convened by the local public body itself, or to gatherings convened by others where a majority or quorum of the members of the public body is expected to attend, and at which *those members* are planning to discuss, deliberate or decide the public business of their jurisdiction.

ARGUMENT

The League hereby adopts and incorporates by reference the argument of the County in its opening brief, and submits the following additional argument.

1. BACKGROUND.

a. The statutory framework.

The Act is a part of the Colorado Sunshine Law, which was enacted as the result of the passage of a citizen initiative in 1972. In 1991, the Act was made applicable to local public bodies. 1991 Colo. Sess. Laws 142.

There are three parts to the Colorado Sunshine Law. The first deals with disclosure requirements for public officials. § 24-6-201, *et. seq.*, C.R.S. The second deals with the regulation of lobbyists. § 24-6-301, *et seq.*, C.R.S. The third, generally referred to as the Colorado Open Meetings Act, deals with open meetings. § 24-6-401, *et. seq.*, C.R.S.

The obligations of the Act concerning openness, notice and minutes are applied to "meetings" of public bodies, and a central issue in this appeal is the Court of Appeals broad construction of this pivotal term. The Act defines a "meeting" as "any kind of gathering, convened *to discuss public business*, in person, by telephone, electronically, or by other means of communication." §24-6-402(1)(b), C.R.S. (Emphasis added.)

The notice provision of the Open Meetings Act involved in this case reads as follows:

> Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public . . .

§ 24-6-402(2)(c), C.R.S.

It is important to emphasize that the impact of the Court of Appeals' decision on Colorado local governments will reach well beyond local *governing bodies*. The Act imposes its notice requirements at the local level on every "local public body," which the Act broadly defines, in pertinent part, as:

> Any board, committee, commission, authority or other advisory, policy-making, rule-making, or formally constituted body of any political subdivision of the state and any public or private entity to which a political subdivision, or an official thereof, has delegated a governmental decision-making function.

§ 24-6-402(1)(a), C.R.S.

The Act contains a similarly broad definition of "state public body," defining the reach of the Act, and thus the Court of Appeals' decision, to a large universe of entities at the state level. See: §24-6-402(1)(d), C.R.S.

The League disagrees with the Court of Appeals' conclusion that these statutes require all of these public bodies to treat as a "meeting" and give full and timely notice of any gatherings convened by someone

other than the public body itself[1], where the members of the public body in attendance may obtain useful information but are not expected to engage in substantial discussion among themselves or make decisions concerning the public business of their jurisdiction.

b. The factual context of the Court of Appeals decision.

The gathering to which the county commissioners were invited in this case was called by CDPHE, not by the county commissioners. The commissioners made no presentation, did not participate in the discussions, and did not ask any questions of the presenters. (Op. at 2; Appendix A.) Instead, the commissioners were mere observers. They witnessed presentations concerning the mining company's operations, its problems related to compliance with regard to state water quality laws, and its corrective action plan. In short, they attended an event convened by another agency solely for the purpose of gathering information. Nonetheless, the Court of Appeals concluded that this Health Department gathering should have been treated as a "meeting" of the Costilla County Board of County Commissioners. The Court then found that the issuance of an invitation to the Commissioners created an expectation that a majority or quorum of the board would actually attend the Health Department's gathering, and thus that

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[1] The League does not dispute that most gatherings of a public body that are convened by the public body itself require notice as "meetings" under the Act. At such events, it is reasonable to expect a majority or quorum of the body to be in attendance and discussing public business, as part of the body's formal "deliberative" stage of the public policy process. The League's focus in this appeal is on gatherings convened independently of the public body, to which public body members are merely invited. These gatherings are not "convened" as a forum for public body members to "discuss" public business. Such gatherings will be characterized as "independent" herein.

the board was obliged to provide full and timely notice, because "matters of public interest likely to come before the board would be addressed."[2](Op. at 7; Appendix A.)

2. THE PURPOSE OF THE ACT IS TO ALLOW THE PUBLIC TO OBSERVE THE FORMATION OF PUBLIC POLICY BY REQUIRING NOTICE AND OPENNESS WHEN PUBLIC BUSINESS IS TO BE DISCUSSED AND DELIBERATED *BY THE PUBLIC BODY.*

The Colorado Open Meetings Act begins with the following declaration: "It is declared to be a matter of statewide concern and the policy of this state that *the formation of public policy* is public business and may not be conducted in secret." § 24-6-401, C.R.S. (emphasis added) As this Court has elaborated, the Colorado Open Meetings Act "reflects the considered judgement of the Colorado electorate that democratic government best serves the commonwealth *if its decisional processes are open to public scrutiny." Benson v. McCormick*, 578 P.2d 651, 653 (Colo. 1978). (emphasis added) The specific remedy provided in the Act for violation of the notice requirements is invalidation of any resolution, rule, regulation, ordinance or formal action taken or made at a meeting that was held without the requisite public notice having been given. §24-6-402(8), C.R.S.

The declaration of policy and remedy provisions of the Act, together with this Court's statement in *Benson*, suggest that the harm to be avoided by the Act's public notice requirements is the *secret formation of public policy* and *secret decision-making* by a public body, not the prospect of members gathering information without formal prior notice to the public. This purpose can be effectively achieved by interpreting the public notice requirements of the Act less broadly than did the Court of Appeals, that

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[2] According to the Court of Appeals, the only action taken by the County with any connection to the matters discussed at the State Health Department's meeting was subsequent issuance, not by the Board, but by county administrative staff of three permits associated with construction of a water treatment plant to address pollution from the mine. (Op. at 3; Appendix A.)

is, by fairly reading the Act to require notice only of independent gatherings where members of the public body are expected to actively participate in discussion or decision-making concerning the public business of their jurisdiction.

3. THIS COURT SHOULD NOT AFFIRM EXTENSION OF THE PUBLIC NOTICE PROVISIONS OF THE ACT TO THE INFORMATION GATHERING, OR "COLLECTIVE INQUIRY," STAGE OF THE PUBLIC POLICY PROCESS.

The central question in this appeal is whether the Act should be construed so broadly as to require full and timely notice to the public of every gathering at the information gathering, or "collective inquiry," stage of the public policy process, regardless of whether the gathering will actually involve any public body discussion of public business.

A review of open meetings laws in various states shows that, while all jurisdictions seem to agree that meetings at the deliberative and decision-making stages of the public policy process must be open to the public, the law is mixed on the issue of whether meetings at the information gathering stage must also be open. Several states, including Kentucky, Mississippi and Virginia, have open meetings laws that, like the Act, do not by their specific terms limit their application to meetings called by the public body, or at which that body is expected to take official action or discuss public business. Kentucky Revised Statutes §§ 61.805, 61.810; Mississippi Code §§ 25-41.3, 25-41.5; Virginia Code Ann. § 2.2-3707. In each of these states, however, there has been some interpretation of the open meetings laws, either by the state attorney general or by a state appellate court, that the provisions of the open meetings laws do not apply when a meeting is convened by some group other than the public body, Kentucky OAG 78-634, or is for the purpose of listening or gathering information. *Hinds County Bd. of Supvrs. v. Common Cause*, 551 So. 2d 107 (Miss. 1989), *Nageotte v. Board of Supvrs.*, 288 S.E. 2d 423 (Va. 1982).

When members of a public body are invited to a function where they won't be discussing any business of their jurisdiction among themselves, but will instead simply be gathering information, the purposes of the Act are not frustrated if the public body isn't required to provide notice that its members have received the invitation. As one commentator has noted, public scrutiny is not as vital at these early information gathering stages of the public policy process as it is at the later "deliberative" and decision-making stages of that process.

> The public's input at the collective inquiry stage is less significant because there is less to evaluate and influence; members are merely developing a range of possible solutions to a given issue. A rule that opens only the deliberative and decision stages does not divorce the public from the stage at which agency members critically evaluate possible strategies for addressing a given issue. For this reason, such a rule satisfies the public's interest in evaluating and influencing public agency policy and in preventing agency members from unilaterally controlling public policy.
>
> [This] narrow view... accomplishes the goals of the legislation by allowing public scrutiny of the important stages of the agency decision making process. It also provides an environment in which agencies are free to explore all possible courses of action before narrowing the range of options. Thus, the narrow view balances the desire for open government with the need for operational structures that promote efficient use of agency time and resources.

David A. Barrett, Note, *Facilitating Government Decision Making: Distinguishing Between Meetings and Nonmeetings Under the Federal Sunshine Act*, 66 Tex. L. Rev. 1195, 1215-1216 (1988).

Clearly, deliberation and decision making by a Colorado public body must take place in properly noticed meetings. The League respectfully urges, however, that neither the language of the Act nor its purpose compel the conclusion of the Court of Appeals that public bodies must provide notice of every independent gathering to which a majority or quorum of its member have been invited, if matters of possible interest to the jurisdiction may be addressed, even though any members of the public body who do decide

to attend will be there simply to gather information, and not to discuss public business among themselves. Any such discussion and deliberation will occur later, in a gathering of the public body actually "convened to discuss public business" of the jurisdiction. Of course, the public will receive prior "full and timely notice" pursuant to the Act of this planned deliberation.

4. THE COLORADO CASES CONSTRUING THE ACT DO NOT SUPPORT THE COURT OF APPEALS' INTERPRETATION OF THE NOTICE REQUIREMENTS OF THE ACT.

The decisions of this Court specifically interpreting the public notice provisions of the Act have involved meetings of public bodies convened so that members of that body could discuss *among themselves* the public business of their jurisdiction. The Court of Appeals' decision is the first time a Colorado appellate court has construed the Act to also require a public body to give notice of a gathering convened by somebody else at which members of the body won't be discussing the public business of their jurisdiction.

For example, in *Cole v. State*, 673 P.2d 345 (Colo. 1983), this Court decided that legislative caucus meetings fall within the purview of the Act's requirements. Central to this conclusion was the Court's recognition that a legislative caucus is a "de facto policy-making body which formulates legislative policy that is of governing importance to the citizens of this state." *Id.* at 348-349. Of course, members of the General Assembly utilize caucuses to deliberate among themselves concerning matters that will come before them for votes.

Similarly, in *Bagby v. School Dist. No. 1*, 528 P.2d 1299 (Colo. 1974), this Court reviewed the Act's notice provisions as applied to "superintendent conferences" of the school district and held that such conferences were "meetings" within the meaning of the Act because "board matters were thoroughly

discussed" by board members themselves at the conferences, even though no final formal action was taken. *Id.* at 1300.

Likewise, in *Benson v. McCormick*, 578 P.2d 651 (Colo. 1978), this Court defined the notice obligations under the Act of a committee of the General Assembly, a state public body in which discussion of public business among committee members regularly occurs.

The rationale behind the rulings in *Cole* and *Bagby* is that the public is entitled to receive notice of and attend more than just later meetings where the agenda items "were given only cursory treatment and put to a vote, thereby indicating that the underlying pros and cons for the final decisions had been previously dispensed with during [a] conference when the public was excluded." *Bagby*, 528 P.2d at 1300. These decisions thus require notice to the public pursuant to the Act whenever a public body plans to engage in its *deliberative* function, as well as whenever it will exercise its *decision-making* function.

The construction urged by the League would address the purpose of the Act described by this Court in *Cole* and *Bagby*, since it would require public notice of all independent gatherings at which a majority or quorum is in attendance, or expected to be in attendance if the members of the local public body themselves are expected to engage in the discussion of public business.

5. THE COURT OF APPEALS' DECISION WOULD IMPOSE ON PUBLIC BODIES A CUMBERSOME INVITATION-TRACKING OBLIGATION THAT WOULD INTERFERE WITH PUBLIC OFFICIALS' ABILITY TO PERFORM THEIR DUTIES IN A REASONABLE WAY, CONTRARY TO THE PURPOSE OF THE ACT.

The League recognizes that this Court has stated that the Act is intended to afford the public access to a broad range of meetings at which public business is considered. *Cole v. State*, 673 P.2d 345 (Colo. 1983); *Benson v. McCormick*, 578 P.2d 651 (Colo. 1978); *Bagby v. School Dist. No. 1*, 528 P.2d

1299 (Colo. 1974) As noted above, however, this Court has not, to date, extended the public notice requirements of the Act to independent gatherings at which the members of a state or local public body were mere observers and not active participants. Importantly, this Court has also noted that the Act, "was not intended to interfere with the ability of public officials to perform their duties in a reasonable manner." *Benson*, 578 P.2d at 653 (1978).

Thus, a balance must be struck between the Act's requirement for notice, at least when a body will be deliberating or making decisions, and non-interference with public officials' obligation to reasonably discharge their public duties (which duties may reasonably include gathering information on matters of public interest to their jurisdiction). The Court of Appeals decision fails to strike this balance, because it applies the public notice requirements of the Act to a universe of meetings and gatherings that is vastly broader than the kinds of meetings that have previously been the subject of this Court's review. In doing so, the Court of Appeals has established a rule of law that unduly interferes with the ability of public officials and their administrative staff to perform their duties in a reasonable manner.

As noted above, neither the language of the Act nor its purpose compel the extension of the notice requirements of the Act to independent information gathering events and activities. The Court of Appeals' decision would have serious administrative consequences for local governments and others, due to the breadth of the Court's construction of "meeting," and the notice obligations that flow from this construction.

Local government officials are regularly invited to attend a myriad of events where topics that might broadly be construed as having something to do with "public business" may be addressed. These events range from tours of local facilities to educational seminars (both in-state and out-of-state) to community celebrations and other ceremonial events. If an invitation to any one of this broad class of independent

gatherings potentially triggers a notice obligation under the Act, then a prudent local public body must develop a system to track and examine every event to which its members have been invited or which they may wish to attend (see: Op. at 6-7; Appendix A); determine *how many* members have actually been invited or are otherwise expected to attend each event (this determination will likely need to be adjusted on a daily or even hourly basis, as it is the invitation of a particular *number* of members, a majority or quorum, that triggers the notice obligation); determine whether members have been invited or will attend each event in their "official capacity" or have been invited in some other capacity (see Op. at 7; Appendix A); and, as to each gathering, determine whether any matter that might be considered "public business" will be addressed.

Given the magnitude of this undertaking, a practical consequence of the Court of Appeals' decision will be that public notice will be given of *any* community gathering to which members have been invited where somebody might address potential "public business," so as to err on the side of caution and not violate the Act.

Posting notice based on invitations to all of these independent, information gathering opportunities will do little to provide meaningful, helpful notice to the public. On the contrary, the numbing blizzard of public notices prompted by this overly expansive interpretation of the Act would, like the fabled yellow ribbons tied around a forest of trees, serve only to desensitize and thoroughly confuse the public as to when their local public body members will, *themselves*, actually be *discussing* public business.

Furthermore, members of various boards may simply decide *not to attend* various informational gatherings, in order to avoid uncertainly over whether legally adequate prior notice was required or whether it was given.

Alternatively, concern over notice obligations may cause public bodies to consciously avoid having a majority or quorum of the body attend educational seminars or other events, instead designating some lesser number of the members to attend and gather information for other members. Thus, as a practical matter, the decision of the Court of Appeals does not assure that public body members will gather information only at gatherings for which notice to the public has been provided. A more likely outcome is that public body members will simply gather their information individually, or in smaller groups.

Meanwhile, members of the public will be getting babysitters and making other arrangements to show up for "meetings," only to discover that if public body members are present *at all*, they'll be sitting in the audience and won't actually be engaging in any discussion of public business, making any decisions or taking any public input.

The League respectfully urges that this is not what the General Assembly intended. The Court of Appeals' interpretation goes beyond the purpose of the Act. The rule established by the Court of Appeals would be cumbersome and impractical to apply and could well be counterproductive, in terms of meaningful public notice.

CONCLUSION

The League urges this Court to continue to interpret the Act in such fashion as to strike a reasonable balance between the public's right to observe and participate in the deliberative processes of their public bodies, and the ability of members of those bodies to perform their duties, including information gathering, in a reasonable manner. This can be accomplished by applying the Act's public notice requirements only to the deliberative and decision making stages of the public policy formation process, that is, by applying those requirements to gatherings convened by the local public body itself, or to

gatherings convened by others where a quorum or majority of the body is expected to attend and *deliberate, discuss or decide* the public business of their jurisdiction.

For the foregoing reasons, the League respectfully urges that the decision of the Court of Appeals be reversed.

Dated this 24th day of March 2003.

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Certificate of Mailing

I certify that on the 24th day of March 2003, a true and complete copy of the foregoing Brief of the Colorado Municipal League as *Amicus Curiae* was made upon:

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Kathleen Mathews

COLORADO COURT OF APPEALS

Court of Appeals No. 01CA1171
Costilla County District Court No. 00CV8
Honorable O. John Kuenhold, Judge

Costilla County Conservancy District and Michael McGowan,

Plaintiffs-Appellants,

v.

Board of County Commissioners, Costilla County, Colorado,

Defendant-Appellee.

JUDGMENT REVERSED

Division V
Opinion by JUDGE ROY
Marquez and Erickson*, JJ., concur

September 12, 2002

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*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2001.

In this declaratory judgment action, plaintiffs, Costilla County Conservancy District (CCCD) and Michael McGowan (collectively, the district), appeal from the summary judgment in favor of defendant, Board of County Commissioners of Costilla County (Board). We conclude that the Board violated the Colorado Open Meetings Law (the Act), § 24-6-401, et seq., C.R.S. 2001, and therefore reverse.

Battle Mountain Resources, Inc. (BMRI) operated a gold mine near the town of San Luis in Costilla County. In 1999, while the mine was undergoing reclamation, the Colorado Department of Public Health and Environment (CDPHE) issued BMRI a notice of violation and cease and desist order for violations of water quality laws. To settle that matter, BMRI agreed, inter alia, to construct a water treatment facility.

On September 20, 1999, two of the three members of the Board attended a meeting apparently organized by CDPHE, to which all three commissioners had been invited. At the meeting CDPHE, the Colorado Department of Natural Resources (CDNR), and BMRI all gave presentations concerning BMRI's operations, legal compliance problems, and corrective action plans at the mine. The commissioners made no presentation, did not participate in the discussions, and did not ask any questions of the presenters.

The Board did not give a general public notice of the

meeting. In addition to the commissioners and the presenters, representatives of the National Resource Conservation Service, the mayor of San Luis, county officials, and invited private citizens were in attendance. No member of CCCD, which had been actively involved in legal and administrative proceedings concerning the mine for over a decade, was invited.

Both before and after the meeting, the Board received briefings about the issues addressed at the meeting. Shortly after the meeting, the county land use administrator, who also had attended the meeting, issued three permits authorizing the construction of the water treatment facility.

The CCCD sued the Board, alleging a violation of the Act because the Board failed to give public notice of the meeting. The trial court granted summary judgment in favor of the Board.

I.

Because this case involves issues of statutory construction and a summary judgment, our review is de novo. See United States Leasing v. Montelongo, 25 P.3d 1277 (Colo. App. 2001); Sandoval v. Archdiocese of Denver, 8 P.3d 598 (Colo. App. 2000).

II.

The CCCD contends that the trial court erred in concluding that the meeting was not governed by the Act. We agree.

As relevant here, the Act states:

> (a) All meetings of two or more members of any state public body at which any public

> business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.
>
> (b) All meetings of a quorum or three or more members of any local public body, whichever is fewer, at which any public business is discussed or at which any formal action may be taken are declared to be public meetings open to the public at all times.
>
> (c) Any meetings at which the adoption of any proposed policy, position, resolution, rule, regulation, or formal action occurs or at which a majority or quorum of the body is in attendance, or is expected to be in attendance, shall be held only after full and timely notice to the public.

Section 24-6-402(2), C.R.S. 2001 (emphasis added). Section 24-6-402(1)(b) defines "meeting" as "any kind of gathering, convened to discuss public business, in person, by telephone, electronically, or by other means of communication." The Act excludes from its scope "any chance meeting or social gathering at which discussion of public business is not the central purpose." Section 24-6-402(2)(e), C.R.S. 2001.

Courts afford statutory language its ordinary and common meaning, giving effect to every term and provision, including legislative definitions, while harmonizing potentially conflicting provisions, if possible. See Telluride Resort & Spa, L.P. v. Colorado Department of Revenue, 40 P.3d 1260 (Colo. 2002). When a statute is clear and unambiguous, judicial construction is unwarranted, and the statute must be enforced as

written. See Jones v. Martinez, 799 P.2d 385 (Colo. 1990).

Here, based on these undisputed facts, the trial court found that the meeting was not a chance or social gathering, that public business was discussed at the meeting, and that the meeting was attended by a quorum of the county commissioners in their official, not personal, capacities.

However, the trial court relied on the phrase in § 24-6-402(2)(b), "[a]ll meetings of a quorum or three or more members of any local public body . . . at which any public business is discussed," to conclude that the Act applies only to meetings that the public body itself calls, arranges, and in which its members participate. Accordingly, the trial court concluded that the General Assembly did not intend to include within the scope of the Act meetings, like the one here, called or arranged by other government entities or private parties, concerned with public matters, and attended by a quorum of the commissioners who did not participate in the discussion or presentations.

In our view, the trial court's analysis does not properly consider the entire legislative scheme, its purpose, and the relevant definitions.

The General Assembly intended the Act to afford public access to a broad range of meetings at which public business is discussed and to prevent public bodies from carrying out public business in secret. See § 24-6-401, C.R.S. 2001; Benson v.

McCormick, 195 Colo. 381, 578 P.2d 651 (1978); Bagby v. School District No. 1, 186 Colo. 428, 528 P.2d 1299 (1974). The Act is to be interpreted broadly to further the legislative intent to give citizens an expanded opportunity to become fully informed on issues of public importance, so that meaningful participation in the decision-making process may be achieved. See Cole v. State, 673 P.2d 345 (Colo. 1983). Even gatherings or meetings that are not formal or official meetings of a public body may be covered by the Act. See Cole v. State, supra; Bagby v. School District No. 1, supra.

In emphasizing the language of § 24-6-402(2)(b) and concluding that the Act does not necessarily require public notice of "any meeting or presentation at which a quorum is present," the trial court failed to consider § 24-6-402(2)(c), which requires public notice of any meeting where a quorum "is in attendance, or is expected to be in attendance."

Section 24-6-402(2)(c) clearly and unambiguously requires public notice of meetings at which a quorum of commissioners is expected to be present. Thus, reading § 24-6-402(2)(b) and (c) together, we conclude, contrary to the trial court's conclusion, that public notice is required not only when the public body has called or arranged the meeting, but also when a quorum of that body is present or expected to be present at a meeting called or arranged by others. See § 24-6-402(1)(b). This construction is

consistent with the legislative definition of a meeting as "any kind of gathering, convened to discuss public business." See § 24-6-402(1)(b) (emphasis added).

Similarly, because the Act clearly and unambiguously makes expected attendance or expected attendance of a quorum at a meeting the operative fact in determining whether public notice is required, we disagree with the trial court's analysis and conclusion that participation in the discussion is necessary before a meeting is subject to the Act.

Nor do we agree that our interpretation leads to an absurd result. Although each commissioner independently decided whether to attend the meeting, the statute requires notice when the commissioners may be expected to attend, even if they ultimately do not. Without question, the commissioners reasonably were expected to attend a meeting to which they all were invited in their official capacities and where matters of public interest likely to come before the Board would be addressed.

This case is different from the hypotheticals posed by the trial court, in which a quorum of commissioners may decide to attend a meeting independently of one another, without first having been invited or expected to attend. In that case the Act's notice requirement is inapplicable because public notice is, by definition, prospective in nature and can be given only when it is known or expected that the commissioners will attend a

meeting.

Here, the commissioners were invited and expected to attend a meeting convened for the purpose of discussing matters of public interest regarding a subject that had been and foreseeably would again be before them, and a quorum in fact did attend. Under these circumstances the commissioners had an obligation either to comply with the public notice requirement of the Act or to negate the expectation that they would attend. This does not lead to an absurd result.

A contrary holding would encourage behavior clearly inconsistent with the purpose of, and jurisprudence pertaining to, the Act. If public entities are excused from the public notice requirements merely because they did not convene or arrange the meeting, private parties would be encouraged to circumvent the Act by inviting public officials to attend as passive onlookers private presentations on public matters for the purpose of influencing their subsequent policy decisions. Consequently, citizens would have less opportunity to become fully informed on issues of public importance and would be deprived of meaningful participation in the decision-making process, thus undermining the legislative purpose behind the Act. See Cole v. State, supra. That interpretation would be inconsistent with a liberal construction of the Act in favor of openness and public notice and would fail to protect the public,

the Act's ultimate beneficiary. See Cole v. State, supra.

Under the circumstances presented here, the Board was required to give public notice of the meeting pursuant to the Act.

The judgment is reversed.

JUDGE MARQUEZ and JUSTICE ERICKSON concur.