

The Legal Framework of Transparency and Accountability within the Context of Privatization

Exerpts from report by Diane Dilanni, member of the LWVEF Education Study Committee on Privatization of Government Services, Assets and Functions.

The legal frameworks within which public and private sector entities operate differ. Government entities are statutorily required to conduct their business through open, transparent processes to ensure that they are accountable to the citizenry. It is based upon the conviction that citizens can only effectively exercise their role as overseers of government action where they have unfettered access to information about government operations. Because of this, public transparency laws have been enacted throughout the United States at the federal, state, and local levels. Such laws include sunshine (open meeting) laws and freedom of information or public record acts.

The privatization of public services raises particular issues with respect to transparency, however, because generally transparency laws apply exclusively to public bodies and not to private entities. Where the provision of government services are transferred into private hands, what then becomes of the public's right of access to information regarding those services? This question becomes more relevant as more proposals are put forward for the privatization of public services.

Some judicial and legislative efforts have been made to address these concerns. Some state legislatures have been making accountability statutes applicable to private entities carrying out government functions. However, public accountability advocates remain concerned that even when accountability statutes are in place, public access to information and records in the hands of private contractors often is frustrated when statutory language does not adequately cover the private sector entity or a court ruling regarding transparency has not been obtained. Sometimes private contractors are not aware of applicable laws and refuse to provide the information and records.

In many cases, initial privatization proposals are not receiving thorough public vetting in advance of their adoption. The rules and procedures are not in place that would protect the public interests.

In conclusion, the privatization of government function is of such weight and import that special attention must be given to ensuring full transparency both in advance of the approval of any such proposal and also in the subsequent operations of the private entity performing the government services in the event it is adopted. Only in this way can the People's role as overseer of the government be assured.

Summary report by Carol Rush
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The complete text of this report is posted on the LWWUS website. To access the report, go to www.lwv.org. Log in, click on "Members," click on "Projects and Programs," and click on "Privatization Study." Then you can view the study committee's postings.