

# Members Only



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## Ohio's Open Meetings Law\*

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Ohio's Open Meetings Law, Revised Code section 121.22, requires all public bodies to take official action and to conduct all deliberations on official business only in open meetings, unless specifically excepted by law. Although the Law requires that it be liberally construed with this goal in mind, there are exemptions from the Law as well as exclusions from the definition of a "public body."

Failure to comply with the law results in the invalidation of any resolution, rule, or other formal action taken, and subjects the public body to a civil fine and responsibility for paying court costs and attorney's fees.

### What is a public body?

The Law defines "public body" as:

- (1) Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority;
- (2) Any legislative authority or board, commission, committee, council, agency, authority, or similar decision-making body of any county, township, municipal corporation, school district, or other political subdivision or local public institution; and
- (3) Any committee or subcommittee of the bodies mentioned in (1) or (2).

In 1998, the General Assembly also subjected to the Law a court of jurisdiction of a sanitary district organized wholly for providing a water supply for domestic, municipal, and public use, when meeting for the appointment, removal, or reappointment of a member of the district board or any other matter related to the district other than litigation involving it. Other than sanitation courts, "public body" does not generally include courts.<sup>1</sup>

Several bodies or meetings are specifically exempted from the Law. They are listed in the **Appendix** on page 9.

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*Public bodies are required to take official action and to conduct deliberations on official business in open meetings. A resolution, rule, or formal action by a public body is invalid unless adopted in an open meeting.*

\*This *Members Only* brief is an update of an earlier brief on this subject dated September 18, 2006 (Volume 126 Issue 9).



*If a private body is organized and authorized to receive government funds and to make decisions about spending the funds, the body may be considered a public body, and the Open Meetings Law applies to it.*

*A function where public business is discussed and where a majority of the members of a public body attend in official capacity may be construed as a meeting of that public body, regardless of who initiated the function.*

The General Assembly is covered by a separate law. R.C. 101.15 requires all meetings of any legislative committee, other than caucus meetings and certain meetings of the Joint Legislative Ethics Committee (JLEC), to be open to the public. JLEC sessions addressing allegations against legislators and requests for advisory opinions remain confidential. Section 101.15 makes meetings of the General Assembly open to the public in a manner similar to that required of most other public bodies by the Open Meetings Law. (See the LSC *Members Only* brief, "[General Assembly Open Meetings Law](#)," February 9, 2017, available at [LSC's website](#).)

Municipal charters with provisions concerning meetings of municipal bodies take precedence over the Law.<sup>2</sup>

### **Determinations**

The term "public body" applies to many different decision-making bodies at both the state and local level. When the statute does not specifically identify an entity as a "public body," the courts have used a variety of factors to identify its status, including the manner in which the entity was created,<sup>3</sup> its name or official title,<sup>4</sup> its membership composition,<sup>5</sup> whether it engages in decision making,<sup>6</sup> and whom the entity advises or to whom it reports.<sup>7</sup>

The following have been determined to be public bodies: a board of directors of a county agricultural society; an advisory committee created by a board of county commissioners to make recommendations about a new jail;

a housing advisory board created by a county pursuant to state law; an advisory committee to a board of health of a general health district; a private nonprofit corporation acting as a PASSPORT administrative agency; a group of architectural consultants for a city known as an urban design review board; and a building leadership team authorized by a school district collective bargaining agreement.<sup>8</sup>

### **Private entities**

A governmental decision-making body cannot assign its decision-making powers to a private body in order to avoid public scrutiny under the Law. Private entities may be considered "public bodies" for purposes of the Law if they are organized pursuant to statute and are statutorily authorized to receive, and to make decisions about how to spend, government funds for a governmental purpose.<sup>9</sup>

## **What is a meeting?**

### **In general**

The Open Meetings Law defines a "meeting" as "any prearranged discussion of the public business of the public body by a majority of its members."<sup>10</sup> Although not expressly required in the Law, some authority suggests that meetings of a public body should be conducted in public meeting places and within the public body's geographical jurisdiction.<sup>11</sup>

In 1990, the Ohio Supreme Court found that if a majority of the members of a public body attend, in their official capacity, a meeting



where public business is discussed, the gathering may be a meeting of the public body, regardless of who initiated the meeting. In this case, a majority of county, township, and city officials met at the request of the city mayor for a "retreat" where public business was discussed, but where no specific proposals were made and no official action was taken. The Court held that if a majority of the members of a public body gather with representatives of other public bodies, the gathering may constitute a meeting under the Open Meetings Law separately for each public body that has a majority of members present. Under the facts of this case, the news media were denied access and were told that the meetings were intended to be private.<sup>12</sup>

Some courts have found, however, that a gathering of the members of a public body is not a meeting if the members act only as passive observers in an informational session or in a ministerial fact-gathering capacity.<sup>13</sup> The simple presentation of information to a public body, without more, may not constitute a "discussion" of its public business.<sup>14</sup> Similarly, a presentation to a public body by its legal counsel where legal advice is received by it may not constitute "deliberations" by the public body.<sup>15</sup>

### ***Conversations and sequential meetings***

Unless two members constitute a majority, isolated one-to-one conversations about public business between individual members of a public body, in person or by telephone,

do not violate the Open Meetings Law.<sup>16</sup> However, deliberations during one-to-one conversations in which an item of business is sequentially but separately discussed with a majority of a public body's members apart from a traditional meeting violate the Law.<sup>17</sup> Similarly, a series of closed "back-to-back" meetings with less than a majority in attendance, where the same topics of public business are discussed, is an unlawful circumvention of the Law.<sup>18</sup>

### ***Conference calls and teleconferences***

In addition, a conference call among a majority of members generally is prohibited; physical presence generally is required at a meeting of a public body unless a specific law permits otherwise.<sup>19</sup> The General Assembly has authorized particular public bodies to meet, or their members to be "present," via teleconference. These include school district financial planning and supervision commissions, boards of port authorities, and boards of public hospitals. In many, but not all, cases the exception explicitly requires that provisions be made for public attendance at one or more locations involved in the teleconference.<sup>20</sup>

### ***Quasi-judicial proceedings***

Adjudications of disputes in quasi-judicial proceedings are not meetings. A requirement for a public hearing is not the same as the open meetings requirement for a public body to conduct its official business and deliberations in meetings open for the public.<sup>21</sup>

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*Members of a public body generally must attend meetings in person, but the General Assembly has authorized members of particular public bodies to attend via teleconference.*

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*One-to-one conversations between individual members of a public body about public business may violate the Open Meetings Law if the same matter is sequentially addressed with a majority of members.*



*Public bodies must promptly prepare, file, and maintain minutes of all regular and special meetings.*

*Executive sessions exclude the public and may be called only for limited purposes and with majority approval.*

### **Email communications**

Despite the otherwise liberal construction usually applied to the Open Meetings Law, one Ohio appellate court has held that the Law does not apply as a "prearranged" meeting to an unsolicited and unexpected email sent from one board member to other board members or to a spontaneous one-on-one telephone conversation between two members of a five-member board. However, the Ohio Supreme Court has found that the prearranged element does not require the parties to participate at the same time, and a series of emails among a majority of board members can constitute a prearranged gathering even when the emails started with one board member sending an unsolicited email to other board members.<sup>22</sup>

### **Notice of meetings**

Every public body must establish by rule a reasonable method for the public to determine the time and place of all regularly scheduled meetings and the time, place, and purpose of all special meetings. The rule must provide that any person, on request and payment of a reasonable fee, may obtain reasonable advance notification of all meetings at which a specific type of public business is to be discussed. The public body must give at least 24 hours' advance notice of each special meeting to all news media that have requested notification; or, for an emergency meeting requiring immediate official action, the member or members of a public body calling the meeting must immediately notify all news media that have requested notification.<sup>23</sup>

### **Minutes**

Public bodies are required to promptly prepare, file, and maintain minutes of all regular and special meetings. The minutes must be open to public inspection. They need not detail discussions occurring during executive sessions, but must reflect the general subject matter of those discussions. The minutes must contain sufficient facts and information to permit the public to understand and appreciate the rationale behind the public body's decision.<sup>24</sup>

### **Executive sessions**

An executive session is a portion of a meeting from which the public is excluded and at which only the persons a public body may invite are permitted to be present.<sup>25</sup> The Law permits the members of a public body to hold an executive session only after a majority of a quorum determines, by a roll call vote, to hold the session, and only at a regular or special meeting for the sole purpose of considering any of the following:<sup>26</sup>

- (1) The appointment, employment, dismissal, discipline, promotion, demotion, or compensation of a public employee or official, or the investigation of charges or complaints against a public employee, public official, licensee, or regulated individual, unless the individual requests a public hearing. However, except as otherwise provided by law, no public body may hold an executive session for the discipline of an elected official for conduct related to the official's performance or for the official's removal from office.



(2) The purchase of property for public purposes, the sale of property by competitive bidding, or the sale or other disposition of unneeded, obsolete, or unfit-for-use township property, if premature disclosure of information would give an unfair advantage to certain persons;<sup>27</sup>

(3) Conferences with an attorney for the public body concerning disputes involving it that are the subject of pending or imminent court action;

(4) Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment;

(5) Matters required to be kept confidential by federal law or regulations or state statutes;

(6) Details of security arrangements and emergency response protocols for a public body or a public office, if disclosure of the matters to be discussed in executive session could reasonably be expected to jeopardize the security of the public body or public office;

(7) In the case of a county hospital, joint township hospital, or municipal hospital, to consider trade secrets;

(8) Confidential information related to specified matters of an applicant for economic development assistance, or to negotiations with other political subdivisions respecting requests for economic development assistance, that (a) the information is directly related to requests for economic development assistance under specified laws, or

that involves public infrastructure improvements or extension of utility services that are directly related to an economic development project, and (b) a unanimous quorum of the public body determines, by roll call vote, that the executive session is necessary to protect the applicant's interests or the possible investment or expenditure of public funds in connection with the project.

Three bodies are permitted to meet in executive session upon a unanimous vote of those present, to consider confidentially received information pertaining to marketing plans, specific business strategy, production techniques and trade secrets, financial projections, and personal financial statements of an applicant or an applicant's immediate family, including tax records or similar information not open to public inspection. These bodies are the Controlling Board, the Tax Credit Authority, and the Minority Development Financing Advisory Board.<sup>28</sup>

Finally, the Law specifically requires a veterans service commission to hold an executive session for specified purposes relating to applications for financial assistance, unless an applicant requests a public hearing.<sup>29</sup>

### ***Procedure***

The motion and vote to go into executive session must specify the purpose of the executive session. If the purpose is personnel-related, the public body must indicate the specific personnel action to be discussed. For example, if the dismissal of an employee will be discussed, the



public body must specify that the executive session is for discussing an employee's dismissal, but the employee's name need not be specified.<sup>30</sup>

If the use of an executive session is called into question, the public body has the burden of showing that one of the statutory exceptions permits the executive session. Only deliberation on the specified subjects may be held in executive session; decision making must be conducted in public.<sup>31</sup>

## **Enforcement**

*If a violation of the Open Meetings Law is proven, a court of common pleas must issue an injunction against the public body to compel compliance. The public body must pay \$500 civil forfeiture to the party who sought the injunction along with court costs and possibly an award of reasonable attorney's fees.*

Any person may bring an action in the appropriate court of common pleas to enforce the Open Meetings Law within two years after an alleged or threatened violation of it. The court is required to issue an injunction to compel the public body to comply with the Law upon proof of a violation or threatened violation.<sup>32</sup> If an injunction is issued, the court also must order the public body to pay a civil forfeiture of \$500 to the party seeking the injunction, and must award that party all court costs and reasonable attorney's fees. The court may reduce or eliminate an award of attorney's fees if it determines (1) that a well-informed public body reasonably would believe that it was not violating or threatening a

violation of the Law and (2) that it was reasonable for the public body to believe that its conduct or threatened conduct would serve the public policy underlying the authority asserted as permitting the conduct or threatened conduct.<sup>33</sup>

Similarly, if the court does not issue an injunction and determines that the action was frivolous, the court must award all court costs and reasonable attorney's fees to the public body.<sup>34</sup>

A member of a public body who knowingly violates an injunction may be removed from office by an action brought in the court of common pleas for that purpose by the prosecuting attorney or the Attorney General.<sup>35</sup>

Finally, a resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of a public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid, unless the deliberations were for a purpose specifically authorized by the Open Meetings Law and conducted at an executive session.<sup>36</sup> In addition, a resolution, rule, or formal action adopted in an open meeting is invalid if the public body that adopted it violated the Law's notice provisions.<sup>37</sup>





## Endnotes

<sup>1</sup> R.C. 121.22(B)(1). *Walker v. Muskingum Watershed Conservancy Dist.*, 5th Dist. No. 2007 AP 01 0005, 2008-Ohio-4060.

<sup>2</sup> Ohio Constitution, Article XVIII, Sections 3 and 7; see also *State ex rel. Inskeep v. Staten*, 74 Ohio St.3d 676 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164 (1995); *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *Fox v. Lakewood*, 39 Ohio St.3d 19 (1988); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165 (1988).

<sup>3</sup> *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999); *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460, 472 (10th Dist. 2001) (selection committee established by Ohio Rail Development Commission was a "public body" under the Open Meetings Law because it made decisions and advised the Commission; it was immaterial that the selection committee was created without formal action). But see *State ex rel. Am. Civ. Liberties Union of Ohio, Inc. v. Cuyahoga Cty. Bd. Commrs.*, 128 Ohio St.3d 256 (2011) (groups formed by private entities to provide community input, not established by a governmental entity, and to which no government duties or authority have been delegated, were found not to be "public bodies").

<sup>4</sup> See *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, 147 Ohio App.3d 460 (10th Dist. 2001); *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100 (3rd Dist. 1985).

<sup>5</sup> *Wheeling Corp. v. Columbus & Ohio River R.R. Co.*, (relevant that commissioners of the parent Ohio Rail Development Commission comprised a majority of a selection committee's membership).

<sup>6</sup> *Thomas v. White*, 85 Ohio App.3d 410 (9th Dist. 1992) (making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335 (1st Dist. 2001) (whether an urban design review board, composed of architectural consultants for the city, had ultimate authority to decide matters was not controlling because the board actually made decisions in the process of formulating its advice).

<sup>7</sup> *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335 (1st Dist. 2001) (an urban design review board advised not only the city manager, but also the city council, a public body).

<sup>8</sup> Ohio Attorney General Opinion (O.A.G.) 1992-078; O.A.G. 1992-077; O.A.G. 1992-065; O.A.G. 1994-096; O.A.G. 1995-001; *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335 (1st Dist. 2001); *Weissfeld v. Akron Public School Dist.*, 94 Ohio App.3d 455 (9th Dist. 1994).

<sup>9</sup> *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631 (C.P. 1990).

<sup>10</sup> R.C. 121.22(B)(2).

<sup>11</sup> O.A.G. 1992-032; O.A.G. 1944-7038.

<sup>12</sup> *State ex rel. The Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

<sup>13</sup> *Steingass Mech., Inc. v. Warrensville Heights Board of Ed.*, 151 Ohio App.3d 321, 2003-Ohio-28, (8th Dist.).

<sup>14</sup> *DeVere v. Miami University Board of Trustees*, 12th Dist., Butler No. CA85-05-065, 1986 Ohio App. LEXIS 7171 (June 10, 1986).

<sup>15</sup> See *Steingass Mech., Inc.*

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<sup>16</sup> *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540 (1996); *Maser v. Canton*, 62 Ohio App.2d 174 (5th Dist. 1978); *McIntyre v. Westerville School Dist.*, 10th Dist., Franklin No. 90AP-1024, 1991 Ohio App. LEXIS 2658 (June 6, 1991).

<sup>17</sup> *State ex rel. Floyd v. Rock Hill Local School Bd. of Education*, 4th Dist., Lawrence No. 1862, 1988 Ohio App. LEXIS 471 (February 10, 1988).

<sup>18</sup> See generally, *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540 (1996) (the very purpose of the Open Meetings Law is to prevent such a game of "musical chairs" in which elected officials contrive to meet secretly to deliberate on public issues without accountability to the public).

<sup>19</sup> R.C. 121.22(C).

<sup>20</sup> See R.C. 308.051, 339.02, 749.07, 749.18, 3316.05(K), 3333.02, 3701.33, 3781.342, 4582.60, 5123.35, and 6133.041.

<sup>21</sup> *TBC Westlake v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58 (1998); O.A.G. 2000-035.

<sup>22</sup> *Haverkos v. Northwest Local School District*, 2005-Ohio-3489 (1st Dist. Ct. App. Hamilton County) (the facts of this case did not support a finding of a prearranged meeting in that an email communication by one school board member to two other members was unsolicited and not responded to – mere "passive" receipt of email); but see *White v. King*, 147 Ohio St.3d 74 (2016) (a series of emails among a majority of board members can constitute a prearranged gathering even when the emails started with one member sending an unsolicited email to other board members).

<sup>23</sup> R.C. 121.22(F). *Wyse v. Rupp*, 6th Dist., Fulton No. F-94-19, 1995 Ohio App. LEXIS 4008 (September 15, 1995); O.A.G. 1988-029.

<sup>24</sup> R.C. 121.22(C). *State ex rel. Long v. Cardington Village Council*, 92 Ohio St.3d 54 (2001); *White v. Clinton Cty. Bd. of Commrs.*, 76 Ohio St.3d 416 (1996).

<sup>25</sup> *Dayton Newspapers v. Dayton*, 28 Ohio App.2d 95 (2nd Dist. 1971).

<sup>26</sup> R.C. 121.22(G).

<sup>27</sup> O.A.G. 1988-003.

<sup>28</sup> R.C. 121.22(E).

<sup>29</sup> R.C. 121.22(J).

<sup>30</sup> *Beisel v. Monroe Cty. Bd. of Education*, 7th Dist., Monroe No. CA-678, 990 Ohio App. LEXIS 3761 (August 29, 1990).

<sup>31</sup> *Mansfield City Council v. Richland City Council AFL-CIO*, 2003 Ohio App. LEXIS 6654 (5th Dist. Ct. App., Richland County) (reaching a consensus to take no action on a pending matter is impermissible during an executive session); *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728 (1st Dist. 1989); *State ex rel. Humphrey v. Adkins*, 18 Ohio App.2d 101 (2nd Dist. 1969).

<sup>32</sup> R.C. 121.22(I)(1).

<sup>33</sup> R.C. 121.22(I)(2)(a).

<sup>34</sup> R.C. 121.22(I)(2)(b).

<sup>35</sup> R.C. 121.22(I)(4).

<sup>36</sup> *State ex rel. Delph v. Barr*, 44 Ohio St.3d 77 (1989).

<sup>37</sup> R.C. 121.22(H).



## **Appendix: Bodies or Meetings Specifically Exempted from the Open Meetings Law\*\***

- A grand jury;
- An audit conference conducted by the Auditor of State or independent certified public accountants with officials of the public office that is the subject of the audit;
- The Adult Parole Authority when its hearings are conducted at a correctional institution solely for the purpose of interviewing inmates to determine parole or pardon;
- The Organized Crime Investigations Commission;
- A child fatality review board meeting;
- Meetings related to state-level review of child deaths;
- Meetings between a public children services agency's executive director and county prosecuting attorney regarding the release of information about a deceased child;
- The State Medical Board, the Board of Nursing, the State Board of Pharmacy, the State Chiropractic Board, or the Occupational Therapy, Physical Therapy, and Athletic Trainers Board when determining whether to suspend a license or certificate without a prior hearing under certain circumstances;
- The Executive Committee of the Emergency Response Commission when determining whether to issue an enforcement order or request that a civil action, civil penalty action, or criminal action be brought to enforce the Emergency Planning Law;
- The nonprofit corporation known as JobsOhio, any committee of JobsOhio, and any subsidiary of that corporation or committee; and
- An audit conference between audit staff of the Department of Job and Family Services and the public office officials who are the subject of the audit.

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\*\*R.C. 121.22(D).