

THE OHIO SUNSHINE LAWS

Simply put, Ohio's Sunshine Laws are based on the principles of democracy. The Ohio Open Meetings Act is based on the notion that citizens must be able to observe and scrutinize the operations of their representative government. The purpose of the act is to ensure accountability of elected officials by prohibiting secret deliberations of public issues.

To that end, the Open Meetings Act requires public bodies to deliberate, discuss, and conduct official business in open meetings. Government officials must liberally construe the law with these goals in mind. There are only limited situations when a public body may adjourn into executive session to discuss matters privately.

THE OPEN MEETINGS ACT: “MEETINGS” DEFINED

Whether a gathering of public officials is subject to the open meetings law depends on whether the gathering is a “meeting” as defined in Ohio law.

DEFINITION:

For a gathering to be a “meeting,” the gathering must have **three characteristics**: it must be (1) a **prearranged** gathering; (2) that is attended by a **majority** of the members of the public body; *and* (3) arranged for the purpose of **conducting, transacting, deliberating, or discussing** public business. Where *all* three of these characteristics are present, the gathering is a “meeting” for purposes of the open meetings law, and the provisions of that law must be satisfied; specifically, the meeting must be open, proper notice must be given, and minutes must be maintained.

PREARRANGED GATHERING.

This statute is not intended to prohibit *truly* impromptu encounters between members of public bodies. For example, an unsolicited e-mail from one board member to other board members is not “pre-arranged,” and a spontaneous one-on-one telephone conversation between two board members is similarly not “pre-arranged”.

MAJORITY OF MEMBERS.

This is a simple majority, 50%, and the requirement attaches no matter whether it is the whole body or only a committee or subcommittee of the body that is at issue. For instance, if council is comprised of seven members, four would constitute a majority for purposes of this requirement. But, if council appoints a finance committee, which is comprised of only three members, then two of those members constitute a majority of the finance committee. In other words, the finance committee is a “public body” in and of itself, and it must separately comply with the open meetings law. *NOTE: This commission will deal with the issue of two majorities and two quorums.*

CONFERENCE CALLS.

Teleconferencing and videoconferencing are prohibited - a member must be present *in person* in order to deliberate, vote, or to be counted in a quorum. Nevertheless, members ought not circumvent the open meetings law by conducting a conference call, claiming that a majority is not “present” at the meeting.

DISCUSSIONS OR DELIBERATIONS.

The intent of the open meetings law is “to require governmental bodies to **deliberate** public issues in public. Much debate has occurred as to what activity constitutes “discussions” or “deliberations” of a public body, such that a gathering may constitute a “meeting”.

Some courts draw a distinction between “discussions” and “deliberations” on one hand, and “information-gathering” or “fact-finding” on the other. Courts, by and large, agree that “**discussion**” of the public business means the exchange of words, comments or ideas by the public body. And a single unsolicited e-mail from one board member to two other members, with no responses or counter-responses, does not constitute “discussion” in violation of the open meetings act.

The term “deliberation” means the act of weighing and examining reasons for and against a choice. Moreover, “**deliberation**” requires a thorough discussion of all factors involved, a careful weighing of positive and negative factors, and a cautious consideration of the ramifications of the proposal, while gradually arriving at decision. Consequently, conversation between *employees* of a public body does not constitute deliberation of the public body? In addition, a presentation to a public body by its legal counsel, where legal advice is received by the public body may not constitute deliberation by the public body. Also, a press conference is probably not a gathering where deliberation occurs.

FACT-FINDING OR INFORMATION-GATHERING.

Some courts distinguish “discussions” or “deliberations,” which must be held in public, from information-gathering, investigation, or fact-finding, which do *not* have to be held in open session. In fact, some courts conclude that before “deliberations” can even begin, the public body must first obtain all “relevant and salient facts” necessary to reach a correct, proper, prudent and responsible decision.

Accordingly, these courts conclude that “question-and-answer sessions between board members and other persons who are not public officials do *not* constitute 'deliberations' unless a majority of the board members also entertain a discussion of public business with one another”.

In short, these courts believe that where the majority of members of a public body meet at a prearranged gathering in a “ministerial, fact-gathering capacity,” the third characteristic of a meeting is not satisfied - *i.e.*, there are no discussions or deliberations occurring. In which case, no open meeting is required.

MULTIPLE PUBLIC BODIES.

Where the gathering satisfies all three of these characteristics, it is a “meeting”, regardless of whether the public body initiated the gathering itself, or whether it was initiated by another entity. And if the meeting is attended by representatives of multiple public bodies, the gathering may be construed to be a separate “meeting” for each public body.

WORK SESSIONS.

“Work sessions” are “meetings” where public business is discussed among a majority of the members of a public body at a prearranged time. Accordingly, these “work sessions” must be open to the public, properly noticed, and minutes must be maintained, just as with any other meeting.

QUASI-JUDICIAL BODIES.

The Ohio Supreme Court has determined that quasi-judicial hearings and the deliberations of the quasi-judicial bodies are not “meetings”, and are not subject to the Open Meetings Act.

INFORMAL CONVERSATION.

Some courts have concluded that *one-on-one* conversations between individual members of a public body, either in person or by telephone, do *not* violate the Open Meetings Act. However, members must not conduct *back-to-back* discussions of public business, which, taken together, are attended by a majority of the members. Such “round-robin” or “serial” meetings appear to violate the Open Meetings Act.

EMAIL COMMUNICATION.

At least one appellate court in Ohio has concluded that “Ohio's Sunshine Law does not cover e-mail”. In *Haverkos v. Northwest Local School District Bd. Of Education*, the appellate court in Hamilton County noted that during a 2002 revision of the open meetings law, the legislature did not amend the statute to include “electronic communications” in the definition of a “meeting.” According to the court, this omission indicates the legislature's intent to include e-mails as a potential “meeting”.

OPEN MEETINGS ACT: A PUBLIC BODY'S DUTIES

If a public body is conducting a “meeting”, it has three duties under the open meetings law: The body must (1) issue appropriate **notice** of a meeting (2) that is **open** to the public. Additionally, the public body must (3) promptly prepare **minutes** of the meeting, which are then made available for public inspection.

NOTICE: While the meeting must be conducted in an open venue, the public body must first issue appropriate **notice** of the meeting. The requirements for proper notice will vary depending upon the type of meeting a public body is conducting.

REGULAR MEETINGS.

A “regular meeting” is held at prescheduled intervals, such as “every Tuesday at 7:30 p.m. in the town hall”. For regular meetings, a public body must establish **by rule** a reasonable method that allows the public to determine the **time** and **place** of regular meetings.

SPECIAL MEETINGS.

A “special meeting” is any meeting other than a regular meeting. Moreover, the term “special” implies that the meeting is being held for a specific purpose or purposes. For special meetings, a public body must establish **by rule** a reasonable method that allows the public to determine the **time, place, and purpose** of a special meeting.

PURPOSE STATEMENT.

When holding a special meeting, including an emergency meeting (see discussion below), in addition to advising of the time and date of the meeting, the notice statement must also disclose the purpose(s) for which the special meeting is being conducted.

Where a special meeting is simply a “regular” meeting occurring at a time other than the regularly scheduled time, it is sufficient notice under the law for the stated purpose to be for “general purposes”. However, where the special meeting is being held to discuss particular issues, the purpose statement must specifically indicate those issues, and those specific issues are the only ones that can be discussed at that meeting. If, at the special meeting, the public body discusses matters not disclosed in the purpose statement, the meeting violates the Open Meetings Act.

Moreover, if a public body plans to adjourn into executive session during a special meeting, the topic of the executive session must relate directly to some matter included in the notice. The rule for notification of special meetings must require at least 24 hours advance notification to all media outlets that have requested such notification, and to people who have specifically requested such notice.

EMERGENCY MEETINGS.

An emergency meeting is a special meeting that is convened because a situation requires immediate official action. For this type of meeting, the public body must **immediately** notify all media outlets that have requested such notification, as well as people who have specifically requested such notice, of the **time, place and purpose** of the emergency meeting. The purpose statement must comport with the specificity requirements discussed above.

RULES REQUIREMENT.

The statute specifically requires public bodies to adopt rules establishing methods for notification. Nevertheless, many courts have found that actions taken by a public body

are not invalid simply because the body failed to adopt such rules". These courts reason that the purpose of the law's invalidation section is to invalidate actions taken where insufficient notice of the meeting was provided. Accordingly, where there is no evidence of insufficient notice of a meeting, the technical violation of the rules requirement will likely *not* invalidate all actions taken at that meeting.

WHO RECEIVES NOTICE.

The open meetings law requires every public body to establish rules for notification. The rules must provide that two groups of people will receive notification of meetings: (1) the news media that have requested notification; and (2) any person who has requested reasonable advance notification of all meetings.

As for the second group, the law requires public bodies to enact a rule establishing a method by which a person may sign up to receive notice of meetings. Some suggested methods include mailing an agenda to subscribers on a list or mailing notices in self-addressed stamped envelopes, etc. The method may also require payment of a reasonable fee, and failure to pay that fee means the person is not entitled to receive the requested notice.

MEDIA PUBLICATION OF NOTICE.

Many public bodies routinely notify their local media of all regular, special, and emergency meetings, whether by rule (as required by law) or by practice. And if the media misprints the meeting information, the public body has *not* violated the notice requirement so long as it transmitted accurate information to the media as required by its rule.

However, at least one court has concluded that where publication of the notice is at the newspaper's discretion, such notice is *not* "reasonable notice" to the public. Instead, notice must be consistent and "actually reach the public" to satisfy the statute.

OPENNESS.

A public body must conduct its meetings in a venue that is open to the public. Although the Open Meetings Act does not specifically address where meetings must be held, some case law suggests that meetings must be held in a public meeting place that is within the geographical jurisdiction of the public body. And a meeting is *not* "open" where the doors to the meeting facility are locked. Where space in the facility is too limited to accommodate all interested members of the public, closed circuit television may be an acceptable alternative. The meeting place must also be accessible to individuals with disabilities pursuant to federal law, but this requirement has no Open Meetings Act ramifications.

MINUTES.

A public body must keep full and accurate minutes - the minutes must state sufficient facts and information to permit the public to *understand* and *appreciate* the rationale behind the public body's decisions. Additionally, the public body must promptly prepare the minutes, file them, and maintain them. But minutes are merely the *record* of actions; they are *not* actions in and of themselves, and invalid minutes do *not* invalidate the actions recorded in the minutes. So, for example, if a public body fails to approve

minutes of a meeting, that failure does *not* necessarily render invalid all action taken during that meeting.

As indicated, the minutes of a public body's meetings are open for public inspection.

However, it is *not* an invasion of privacy when a public body discloses minutes containing information that has a certain stigma attached or may negatively affect the subject of the information. And, in the case of townships, the township fiscal officer is assigned the statutory duty to "keep an accurate record of the proceedings of the board of township trustees at all of its meetings".

OPEN MEETINGS ACT: THE PUBLIC'S RIGHT'S

RIGHT TO ATTEND.

A person is guaranteed the right to attend and observe a public meeting, *not* the right to be heard at that meeting. A disruptive person waives this right to attend and may be removed from the meeting.

RIGHT TO RECORD.

Audio and video recording may *not* be prohibited, but the public body is permitted to establish reasonable rules regulating the use of such equipment, such as requiring equipment to be silent, unobtrusive, self-contained, and self-powered to limit interference with the ability of others to hear, see, and participate in the meeting. However, at least one federal court has held that there is no constitutional right to videotape public meetings.

VOTING METHOD.

Unless a particular statute requires a specified method of voting, the public cannot insist on a particular form of voting - the body may use its own discretion in determining the method it will use. The use of secret ballots has only been recognized as permissible for county political party central committees.