The Ohio Open Meetings Act

Overview of the Ohio Open Meetings Act

What is a "public body"?

- Decision-making bodies at any level of government
- May include the committees or subcommittees of a public body, even if these committees do not make the final decisions of the public body

What is a "meeting"?

- A meeting is (1) a prearranged gathering, (2) of a majority of the members of the public body, (3) who are discussing or deliberating public business.
- A meeting does not have to be called a "meeting" for the OMA requirements to apply—if the three elements above are present, the OMA requirements apply even if the gathering is called a "work session," "retreat," etc.

What is "discussion" or "deliberation" of public business?

- "Discussion" is an exchange of words, comments, or ideas.
- "Deliberation" is the weighing and examination of reasons for and against taking a course of action.
- This does not generally include information-gathering, attending presentations, or isolated conversations between employees.

What are the duties of a public body if the OMA applies?

- A public body must give appropriate notice of its meetings.
  - For regular meetings, notice must include the time and place of the meeting. For all other meetings—special and emergency meetings—notice must include the time, place, and purpose of the meeting.
- A public body must make all of its meetings open to the public at all times.
  - Secret ballots, whispering of public business, and "round-robin" discussions are all prohibited under the openness requirement.
- A public body must keep and maintain meeting minutes.
  - Minutes must be (1) promptly prepared, (2) filed, (3) maintained, and (4) open to the public. Meeting minutes do not need to be verbatim transcripts, but must have enough detail to allow the public to understand and appreciate the rationale behind a public body's decisions.

What are the requirements for an "executive session"?

- Proper procedure, including a motion, second, and roll call vote in open session
- Proper topic, which is limited to the topics listed in the OMA. Discussion in the executive session must be limited to the proper topic.

The Ohio Open Meetings Act

The Open Meetings Act requires public bodies in Ohio to take official action and conduct all deliberations upon official business only in open meetings where the public may attend and observe. Public bodies must provide advance notice to the public indicating when and where each meeting will take place and, in the case of special meetings, the specific topics that the public body will discuss. The public body must take full and accurate minutes of all meetings and make these minutes available to the public, except in the case of permissible executive sessions.

Executive sessions are closed-door sessions convened by a public body, after a roll call vote, and attended by only the members of the public body and persons they invite. A public body may hold an executive session only for a few specific purposes, which are listed in the law. Further, no vote or other decision-making on the matter(s) discussed may take place during the executive session.

If any person believes that a public body has violated the Open Meetings Act, that person may file an action in a common pleas court to compel the public body to obey the Act. If an injunction is issued, the public body must correct its actions and pay court costs, a fine of $500, and reasonable attorney fees subject to possible reduction by the court. If the court does not issue an injunction, and the court finds the lawsuit was frivolous, it may order the person who filed the suit to pay the public body's court costs and reasonable attorney fees. Any formal action of a public body that did not take place in an open meeting, or that resulted from deliberations in a meeting improperly closed to the public, or that was adopted at a meeting not properly noticed to the public, is invalid. A member of a public body who violates an injunction imposed for a violation of the Open Meetings Act may be subject to removal from office.

Like the Public Records Act, the Open Meetings Act is intended to be read broadly in favor of openness. However, while they share an underlying intent, the terms and definitions in the two laws are not interchangeable: the Public Records Act applies to the *records of public offices*; the Open Meetings Act addresses *meetings of public bodies*.[877]

A Note about Case Law

When the Ohio Supreme Court issues a decision interpreting a statute, that decision must be followed by all lower Ohio courts. Ohio Supreme Court decisions involving the Public Records Act are plentiful because a person may file a public records lawsuit at any level of the judicial system and often will choose to file in the court of appeals, or directly with the Ohio Supreme Court. By contrast, a lawsuit to enforce the Open Meetings Act must be filed in a county court of common pleas. While the losing party often appeals a court's decision, common pleas appeals are not guaranteed to reach the Ohio Supreme Court, and rarely do. Consequently, the bulk of case law on the Open Meetings Act comes from courts of appeals, whose opinions are binding only on lower courts within their district, but they may be cited for the persuasive value of their reasoning in cases filed in other districts.

[877] "[The Ohio Supreme Court has] never expressly held that once an entity qualifies as a public body for purposes of R.C. 121.22, it is also a public office for purposes of R.C. 149.011(A) and 149.43 so as to make all of its nonexempt records subject to disclosure. In fact, R.C. 121.22 suggests otherwise because it contains separate definitions for 'public body,' R.C. 121.22(B)(1), and 'public office,' R.C. 121.22(B)(4), which provides that '[p]ublic office' has the same meaning as in section 149.011 of the Revised Code.' Had the General Assembly intended that a 'public body' for the purposes of R.C. 121.22 be considered a 'public office' for purposes of R.C. 149.011(A) and 149.43, it would have so provided." , 128 Ohio St.3d 256, 2011-Ohio-625, ¶ 38 (alteration in original).

I. Chapter One: "Public Body" and "Meeting" Defined

Only entities that meet the definition of "public body" are subject to the Open Meetings Act. The Open Meetings Act requires "public bodies" to conduct their business in "meetings" that are open to the public. A "meeting" is any prearranged gathering of a public body by a majority of its members to discuss public business.[878]

A. "Public body"

1. Statutory definition – R.C. 121.22(B)(1)

The Open Meetings Act defines a "public body" as any of the following:

a. Any board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority, and 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;[879]

b. Any committee or subcommittee thereof;[880] or

c. A court[881] of jurisdiction of a sanitary district organized wholly for the purpose of providing a water supply for domestic, municipal, and public use when meeting for the purpose of the appointment, removal, or reappointment of a member of the board of directors of such a district or for any other matter related to such a district other than litigation involving the district.[882]

2. Identifying public bodies

The term "public body" applies to many different decision-making bodies at the state and local level. If a statute does not specifically identify an entity as a "public body," Ohio courts have applied several factors in determining what constitutes a "public body," including:

a. The manner in which the entity was created;[883]

b. The name or official title of the entity;[884]

c. The membership composition of the entity;[885]

d. Whether the entity engages in decision-making;[886] and

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[878] R.C. 121.22(B)(2).
[879] R.C. 121.22(B)(1)(a).
[880] R.C. 121.22(B)(1)(b); , 92 Ohio St.3d 54, 58-59 (2001) ("R.C. 121.22(B)(1)(b) includes any committee or subcommittee of a legislative authority of a political subdivision, *e.g.*, a village council, as a 'public body' for purposes of the Sunshine Law, so that the council's personnel and finance committees constitute public bodies in that context.").
[881] With the exception of sanitation courts, the definition of "public body" does not include courts. *See* , 5th Dist. No. 2007 AP 01 0005, 2008-Ohio-4060, ¶ 27.
[882] R.C. 121.22(B)(1)(c). NOTE: R.C. 121.22(G) prohibits executive sessions for sanitation courts as defined in R.C. 121.22(B)(1)(c).
[883] *State ex rel. Mason v. State Employment Relations Bd.*, 133 Ohio App.3d 213 (10th Dist. 1999); , 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that selection committee established by Ohio Rail Development Commission was a "public body" under the Open Meetings Act because it made decisions and advised the Commission and that it was immaterial that selection committee was created without formal action). *But see* , 128 Ohio St.3d 256, 2011-Ohio-625 (finding that groups formed by private entities to provide community input, not established by governmental entity, and to which no government duties or authority have been delegated, were found not to be "public bodies").
[884] , 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that a selection committee was a "public body" and that it was relevant that the entity was called a "committee," a term included in the definition of a "public body" in R.C. 121.22); *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 103 (3d Dist. 1985) (considering it pertinent that the name of the entity is one of the public body titles listed in R.C. 121.22(B)(1), *i.e.*, Board of Hospital Governors).
[885] , 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that commissioners of the parent Ohio Rail Development Commission comprised a majority of a selection committee's membership).

e. Who the entity advises or to whom it reports.[887]

3. Close-up: applying the definition of "public body"

Using the above factors, the following entities have been found by some courts of appeals to be public bodies:

a. A selection committee established on a temporary basis by a state agency for the purpose of evaluating responses to a request for proposals and making a recommendation to a commission.[888]

b. An urban design review board that provided advice and recommendations to a city manager and city council about land development.[889]

c. A board of hospital governors of a joint township district hospital.[890]

d. A citizens' advisory committee of a county children services board.[891]

e. A board of directors of a county agricultural society.[892]

Courts have found that the Open Meetings Act does not apply to individual public *officials* (as opposed to public *bodies*) or to meetings held by individual officials.[893] Moreover, if an individual public official creates a group solely pursuant to his or her executive authority or as a delegation of that authority, the Open Meetings Act probably does not apply to the group's gatherings.[894]

However, at least one court has determined that a selection committee whose members were appointed by the chair of a public body, not by formal action of the body, is nevertheless a public body and subject to the Open Meetings Act.[895]

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[886] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding tasks such as making recommendations and advising involve decision-making); *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that, whether an urban design review board, composed of a group 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); , 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding that, in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission, the selection committee made decisions).

[887] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding an urban design review board advised not only the city manager, but also the city council, a public body).

[888] , 147 Ohio App.3d 460, 472 (10th Dist. 2001) (finding relevant that the group was called a "committee," a term included in the definition of a "public body" in R.C. 121.22; that a majority of the selection committee's members were commissioners of the commission itself; that, in its role of reviewing and evaluating proposals and making a recommendation to the Ohio Rail Development Commission (a public body), the selection committee made decisions; and that the selection committee was established by the committee without formal action is immaterial).

[889] *Cincinnati Enquirer v. Cincinnati*, 145 Ohio App.3d 335, 339 (1st Dist. 2001) (finding that, whether an urban design review board, composed of a group of architectural consultants for the city, had ultimate authority to decide matters was not controlling, as the board actually made decisions in the process of formulating its advice; the board advised not only the city manager, but also the city council, a public body).

[890] *Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100, 102-03 (3d Dist. 1985) (finding the Board of Governors of a joint township hospital fell within the definition of "public body" because this definition includes "boards"; the board made decisions essential to the construction and equipping of a general hospital; and the board was of a "township" or of a "local public institution" because it existed by virtue of authority granted by the legislature for the creation of joint township hospital facilities).

[891] *Thomas v. White*, 85 Ohio App.3d 410, 412 (9th Dist. 1992) (finding that the committee was a public body because the subject matter of the committee's operations is the public business, each of its duties involves decisions as to what will be done, and the committee by law elects a chairman who serves as an *ex officio* voting member of the children services board, which involves decision-making).

[892] 1992 Ohio Op. Att'y Gen. No. 078.

[893] *Smith v. Cleveland*, 94 Ohio App.3d 780, 784-785 (8th Dist. 1994) (finding a city safety director is not a public body, and may conduct disciplinary hearings without complying with the Open Meetings Act).

[894] *Beacon Journal Publishing Co. v. Akron*, 3 Ohio St.2d 191 (1965) (finding boards, commissions, committees, etc., created by executive order of the mayor and chief administrator without the advice and consent of city council were not subject to the Open Meetings Act); *eFunds v. Ohio Dept. of Job & Family Serv.*, Franklin C.P. No. 05CVH09-10276 (2006) (finding an "evaluation committee" of government employees under the authority of a state agency administrator is not a public body); 1994 Ohio Op. Att'y Gen. No. 096 (determining that, when a committee of private citizens and various public officers or employees is established solely pursuant to the executive authority of the administrator of a general health district for the purpose of providing advice pertaining to the administration of a grant, and establishment of the committee is not required or authorized by the grant or board action, such a committee is not a public body for purposes of R.C. 121.22(B)(1) and is not subject to the requirements of the open meetings law).

[895] , 147 Ohio App.3d 460 (10th Dist. 2001).

4. When the Open Meetings Act applies to private bodies

Some private entities are considered "public bodies" for purposes of the Open Meetings Act when they are organized pursuant to state statute and are statutorily authorized to receive and expend government funds for a governmental purpose.[896] For example, an economic opportunity planning association was found to be a public body within the meaning of the Act based on the following factors: (1) its designation by the Ohio Department of Development as a community action organization pursuant to statute;[897] (2) its responsibility for spending substantial sums of public funds in the operation of programs for the public welfare; and (3) its obligation to comply with state statutory provisions in order to keep its status as a community action organization.[898]

5. Public bodies/officials that are NEVER subject to the Open Meetings Act:[899]

- The Ohio General Assembly;[900]
- Grand juries;[901]
- An audit conference conducted by the State Auditor or independent certified public accountants with officials of the public office that is the subject of the audit;[902]
- The Organized Crime Investigations Commission;[903]
- County child fatality review boards or state-level reviews of deaths of children;[904]
- The board of directors of JobsOhio Corp., or any committee thereof, and the board of directors of any subsidiary of JobsOhio Corp., or any committee thereof;[905] and
- An audit conference conducted by the audit staff of the Department of Job and Family Services with officials of the public office that is the subject of that audit under R.C. 5101.37.[906]

6. Public bodies that are SOMETIMES subject to the Open Meetings Act:

a. Public bodies meeting for particular purposes

Some public bodies are not subject to the Open Meetings Act when they meet for particular purposes, including:

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[896] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631 (C.P. 1990); *see also Stegall v. Joint Twp. Dist. Mem. Hosp.*, 20 Ohio App.3d 100 (3d Dist. 1985).
[897] R.C. 122.69.
[898] *State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Assn. of Greater Toledo*, 61 Ohio Misc.2d 631, 640 (C.P. 1990) ("The language of the [Open Meetings Act] and its role in the organization of public affairs in Ohio make clear that this language is to be given a broad interpretation to ensure that the official business of the state is conducted openly. Consistent with that critical objective, a governmental decision-making body cannot assign its decisions to a nominally private body in order to shield those decisions from public scrutiny.").
[899] R.C. 121.22(D).
[900] While the General Assembly as a whole is not governed by the Open Meetings Act, legislative committees are required to follow the guidelines set forth in the General Assembly's own open meetings law (R.C. 101.15), which requires committee meetings to be open to the public and that minutes of those meetings be made available for public inspection. Like the Open Meetings Act, the legislature's open meetings law includes some exemptions. For example, the law does not apply to meetings of the Joint Legislative Ethics Committee, other than those meetings specified in the law (R.C. 101.15(F)(1)), or to meetings of a political party caucus (R.C. 101.15(F)(2)).
[901] R.C. 121.22(D)(1).
[902] R.C. 121.22(D)(2).
[903] R.C. 121.22(D)(4).
[904] R.C. 121.22(D)(5).
[905] R.C. 121.22(D)(11).
[906] R.C. 121.22(D)(12).

- The Adult Parole Authority, when its hearings are conducted at a correctional institution for the sole purpose of interviewing inmates to determine pardon or parole;[907]
- The State Medical Board,[908] the State Board of Nursing,[909] the State Board of Pharmacy,[910] and the State Chiropractic Board[911] when determining whether to suspend a license or certificate without a prior hearing;[912]
- The Emergency Response Commission's executive committee when meeting to determine whether to issue an enforcement order or to decide whether to bring an enforcement action;[913] and
- The Occupational Therapy Section, Physical Therapy Section, and Athletic Trainers Section of the Occupational Therapy, Physical Therapy, and Athletic Trainers Board when determining whether to suspend a practitioner's license or limited permit without a hearing.[914]

b. *Public bodies handling particular business*

When meeting to consider "whether to grant assistance for purposes of community or economic development" certain public bodies may conduct meetings that are not open to the public. Specifically, the Controlling Board, the Tax Credit Authority, and the Minority Development Financing Advisory Board may close their meetings by *unanimous* vote of the members present in order to protect the interest of the applicant or the possible investment of public funds.[915]

The meetings of these four bodies may only be closed "during consideration of the following information confidentially received ... from the applicant:"

- Marketing plans;
- Specific business strategy;
- Production techniques and trade secrets;
- Financial projections; and
- Personal financial statements of the applicant or the applicant's immediate family, including, but not limited to, tax records or other similar information not open to public inspection.[916]

In addition, the board of directors of a community improvement corporation, when acting as an agent of a political subdivision, may close a meeting by *majority* vote of all members present during consideration of non-public record information set out in R.C. 1724.11(A).[917]

B. *"Meeting"*

1. *Definition*

The Open Meetings Act requires members of a public body to take official action, conduct deliberations, and discuss the public business in an open meeting, unless the subject matter is

[907] R.C. 121.22(D)(3).
[908] R.C. 4730.25(G); R.C. 4731.22(G).
[909] R.C. 4723.281(B).
[910] R.C. 4729.16(D).
[911] R.C. 4734.37.
[912] R.C. 121.22(D)(6)-(9).
[913] R.C. 121.22(D)(10).
[914] R.C. 121.22(D)(13)-(15); R.C. 4755.11; R.C. 4755.47; R.C. 4755.64.
[915] R.C. 121.22(E).
[916] R.C. 121.22(E)(1)-(5).
[917] R.C. 1724.11(B)(1) (providing that the board, committee, or subcommittee shall consider no other information during the closed session).

specifically exempted by law.[918] The Act defines a "meeting" as: (1) a prearranged gathering of (2) a majority of the members of a public body (3) for the purpose of discussing public business.[919]

a. Prearranged

The Open Meetings Act governs prearranged discussions,[920] but it does not prohibit unplanned encounters between members of public bodies, such as hallway discussions. One court has found that neither an unsolicited and unexpected email sent from one board member to other board members, nor a spontaneous one-on-one telephone conversation between two members of a five-member board was a prearranged meeting.[921] However, the "prearranged" element does not require the parties to participate at the same time, and a series of emails exchanged among a majority of board memebers can constitute a "prearranged gathering" even when the emails started with one board member sending an unsolicited email to other board members.[922]

b. Majority of members

For there to be a "meeting" as defined under the Open Meetings Act, "a majority of a public body's members must come together."[923] The requirement that a gathering of a majority of the members of a public body constitutes a meeting applies to the public body as a whole and also to the separate memberships of all committees and subcommittees of that body.[924] For instance, if a council is comprised of seven members, four constitute a majority in determining whether the council as a whole is conducting a "meeting." If the council appoints a three-member finance committee, two of those members would constitute a majority of the finance committee.

i. Attending in person

A member of a public body must be present in person at a meeting in order to be considered present, vote, or be counted as part of a quorum,[925] unless a specific law permits otherwise.[926] In the absence of statutory authority, public bodies may not conduct a meeting via electronic or telephonic conferencing.[927]

ii. Round-robin or serial "meetings"

Unless two members constitute a majority, isolated one-on-one conversations between individual members of a public body regarding its business, either in person or by telephone, do not violate the Open Meetings Act.[928] However, a public body may not "circumvent the requirements of the statute by setting up back-to-back meetings of less than a majority of its members, with the same topics of public business discussed at each."[929] Such conversations may be considered multiple parts of the

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[918] R.C. 121.22(A), (B)(2), (C).
[919] R.C. 121.22(B)(2).
[920] , 76 Ohio St.3d 540 (1996) (holding that the back-to-back, prearranged discussions of city council members constitutes a "majority," but clarifying that the statute does not prohibit impromptu meetings between council members or prearranged member-to-member discussion).
[921] , 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 7.
[922] , 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 15-20.
[923] , 9th Dist. No. 07CA009132, 2007-Ohio-6207, ¶ 17; , 12th Dist. No. CA2010-01-005, 2010-Ohio-4078, ¶ 18 (finding no "meeting" occurred when only two of five Commission members attended a previously scheduled session).
[924] , 92 Ohio St.3d 54, 58-59 (2001).
[925] R.C. 121.22(C).
[926] For example, the General Assembly has specifically authorized the Ohio Board of Regents to meet via videoconferencing. R.C. 3333.02. R.C. 3316.05(K) also permits members of a school district financial planning and supervision commission to attend a meeting by teleconference if provisions are made for public attendance at any location involved in such teleconference.
[927] *See* , 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 9 (noting that, during a 2002 revision of the open meetings law, the legislature did not amend the statute to include "electronic communication" in the definition of a "meeting," and that this omission indicates the legislature's intent not to include email exchanges as potential "meetings").
[928] , 76 Ohio St.3d 540, 544 (1996) ("[The statute] does not prohibit member-to-member prearranged discussions."); , 1st Dist. Nos. C-040578, C-040589, 2005-Ohio-3489, ¶ 11 (finding that a spontaneous telephone call from one board member to another to discuss election politics, not school board business, did not violate the Open Meetings Act); *Master v. Canton*, 62 Ohio App.2d 174, 178 (5th Dist. 1978) (agreeing that the legislature did not intend to prohibit one committee member from calling another to discuss public business).
[929] , 76 Ohio St.3d 540, 543 (1996).

same, improperly private, "meeting."[930] The Ohio Supreme Court has held that improper serial meetings may also occur over the telephone or through electronic communications, like email.[931]

c. *Discussing public business*

With narrow exemptions, the Open Meetings Act requires the members of a public body to discuss and deliberate on official business only in open meetings.[932] "Discussion" is the exchange of words, comments, or ideas by the members of a public body.[933] "Deliberation" means the act of weighing and examining reasons for and against a choice.[934] One court has described "deliberation" as 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 a decision.[935] Another court described the term as involving "a decisional analysis, i.e., an exchange of views on the facts in an attempt to reach a decision."[936] Note that the Ohio Supreme Court has held that discussions of public business may also be conducted over any other media, such as the telephone, video conference, email, text, or tweet.[937] In other words, just because a discussion did not occur in-person does not mean it is exempt from the requirements of the Open Meetings Act.

In evaluating whether particular gatherings of public officials constituted "meetings," several courts of appeals have opined that the Open Meetings Act "is intended to apply to those situations where there has been actual formal action taken; to wit, formal *deliberations* concerning the public business."[938] Under this analysis, those courts have determined that gatherings strictly of an investigative and information-seeking nature that do not involve actual discussion or deliberation of public business are not "meetings" for purposes of the Open Meetings Act.[939] More importantly, the Ohio Supreme Court has not ruled on whether "investigative and informational" gatherings are or are not "meetings." Consequently, public bodies should seek guidance from their legal counsel about how such gatherings are viewed by the court of appeals in their district, before convening this kind of private gathering as something other than a regular or special meeting.

Those courts that have distinguished "discussions" or "deliberations" that must take place in public from other exchanges between a majority of its members at a prearranged gathering, have opined that the following are not "meetings" subject to the Open Meetings Act:

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[930] *See generally* , 76 Ohio St.3d 540, 542-44 (1996) (noting the very purpose of the Open Meetings Act 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); , 97 Ohio St.3d 58, 2002-Ohio-5311, ¶¶ 16-17, 43 (noting that board president conceded that pre-meeting decision of school board president and superintendent to narrow field of applicants should have occurred in executive session); *State ex rel. Floyd v. Rock Hill Local School Bd. of Edn.*, 4th Dist. No. 1862, 1988 WL 17190, **4, 13-16 (1988) (finding school board president improperly discussed and deliberated dismissal of principal with other board members in multiple one-on-one conversations, and came to next meeting with letter of non-renewal ready for superintendent to deliver to principal, which the board then, without discussion, voted to approve); , 10th Dist. No. 12AP-1046, 2013-Ohio-2751 (finding that two presentations were not serial meetings where the gatherings were separated by two months, the presentations were discussed at regularly scheduled meetings, and a regularly scheduled meeting was held between the two presentations).

[931] , 147 Ohio St.3d 74, 2016-Ohio-2770, ¶¶ 16-18 ("Allowing public bodies to avoid the requirements of the Open Meetings Act by discussing public business via serial electronic communications subverts the purpose of the act.").

[932] R.C. 121.22(A); R.C. 121.22(B)(2), (C).

[933] *DeVere v. Miami Univ. Bd. of Trustees*, 12th Dist. No. CA85-05-065, 1986 WL 6763 (1986); , 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.).

[934] *Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 864 (9th Dist. 1998); , 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); , 9th Dist. No. 07CA009132, 2007-Ohio-6207, ¶ 15.

[935] *Theile v. Harris*, 1st Dist. No. C-860103, 1986 WL 6514 (1986).

[936] , 161 Ohio App.3d 372, 2005-Ohio-2868, ¶ 14 (4th Dist.).

[937] , 147 Ohio St.3d 74, 2016-Ohio-2770, ¶ 16.

[938] *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993).

[939] *Holeski v. Lawrence*, 85 Ohio App.3d 824, 829 (11th Dist. 1993) (finding that, when 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 as there are no "deliberations" occurring); *Theile v. Harris*, No. C-860103, 1986 WL 6514 (1st Dist. 1986) (finding a prearranged discussion between a prosecutor and the majority of township trustees did not violate Open Meetings Act because the gathering was conducted for investigative and information-seeking purposes); , 161 Ohio App.3d 372, 2005-Ohio-2868, ¶¶ 14-18 (4th Dist.) (finding it permissible for a board to gather information on proposed school district in private, but it cannot deliberate privately in the absence of specifically authorized purposes); , 12th Dist. No. CA2012-08-076, 2013-Ohio-2396 (2013) (finding that, while information-gathering and fact finding meetings for ministerial purposes do not violate the Open Meetings Act, whether a township's pre-meeting meetings violated the Open Meetings Act was a question of fact when there was conflicting testimony about whether the meetings were prearranged, what the purpose of the meeting was, and whether deliberations took place).

- Question-and-answer session between board members, the public body's legal counsel, and others who were not public officials was not a meeting because a majority of the board members did not engage in discussion or deliberation of public business *with one another*;[940]
- Conversations among staff members employed by a city council;[941]
- A presentation to a public body by its legal counsel when the public body receives legal advice;[942] and
- A press conference.[943]

2. Close-up: applying the definition of "meeting"

If a gathering meets all three elements of this definition, a court will consider it a "meeting" for the purposes of the Open Meetings Act, regardless of whether the public body initiated the gathering itself or whether it was initiated by another entity. Further, if majorities of multiple public bodies attend one large meeting, a court may construe the gathering of each public body's majority of members to be separate "meetings" of each public body.[944]

a. Work sessions

A "meeting" by any other name is still a meeting. "Work retreats" or "workshops" are "meetings" when a public body discusses public business among a majority of the members of a public body at a prearranged time.[945] When conducting any meeting, the public body must comply with its obligations under the Open Meetings Act: openness, notice, and minutes.[946]

b. Quasi-judicial proceedings

Public bodies whose responsibilities include adjudicative duties, such as boards of tax appeals and state professional licensing boards, are considered "quasi-judicial." The Ohio Supreme Court has determined that public bodies conducting quasi-judicial hearings, "like all judicial bodies, [require] privacy to deliberate, *i.e.*, to evaluate and resolve, the disputes."[947] Quasi-judicial proceedings and the deliberations of public bodies when acting in their quasi-judicial capacities are not "meetings" and are not subject to the Open Meetings Act.[948] Accordingly, when a public body is acting in its quasi-judicial capacity, the public body does not have to vote publicly to adjourn for deliberations or to take action following those deliberations.[949]

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940 , 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.) (holding that, in the absence of deliberations or discussions by board members during a non-public information-gathering and investigative session with legal counsel, the session was not a "meeting" as defined in the Open Meetings Act, and that it was not required to be held in public); *Holeski v. Lawrence*, 85 Ohio App.3d 824, 830 (11th Dist. 1993) ("The Sunshine Law is instead intended to prohibit the majority of a board from meeting and discussing public business *with one another*.").

941 *Kandell v. City Council of Kent*, 11th Dist. No. 90-P-2255, 1991 WL 147448 (1991); *State ex rel. Bd. of Edn. for Fairview Park School Dist. v. Bd. of Edn. for Rocky River School Dist.*, 40 Ohio St.3d 136, 140 (1988) (finding an employee's discussions with a superintendent did not amount to secret deliberations within the meaning of R.C. 121.22(H)).

942 , 192 Ohio App.3d 566, 2011-Ohio-703 (1st Dist.); *Theile v. Harris*, No. C-860103, 1986 WL 6514 (1st Dist. 1986).

943 *Holeski v. Lawrence*, 85 Ohio App.3d 824 (11th Dist. 1993).

944 *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); , 9th Dist. No. 13CA0048, 2014-Ohio-4749.

945 *State ex rel. Singh v. Schoenfeld*, 10th Dist. Nos. 92AP-188, 92AP-193, 1993 WL 150498 (1993).

946 *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990).

947 , 81 Ohio St.3d 58, 62 (1998).

948 , 81 Ohio St.3d 58, 62 (1998) ("[T]he Sunshine Law does not apply to adjudications of disputes in quasi-judicial proceedings, such as the [Board of Tax Appeals]."); , 125 Ohio St.3d 438, 445, 2010-Ohio-2167; *see also* , 5th Dist. No. 15 CAH 09 0074, 2016-Ohio-2652, ¶¶ 34-37 (finding that board of zoning appeals hearing was quasi-judicial and therefore Open Meetings Act did not apply); , 5th Dist. No. 2007 AP 01 0005, 2008-Ohio-4060; *Angerman v. State Med. Bd. of Ohio*, 70 Ohio App.3d 346, 352 (10th Dist. 1990); , 10th Dist. No. 16AP-466, 2017-Ohio-756, ¶ 26 (finding that state professional licensing board was quasi-judicial and therefore Open Meetings Act did not apply).

949 , 125 Ohio St.3d 438, 2010-Ohio-2167 (holding that, because R.C. 121.22 did not apply to the elections board's quasi-judicial proceeding, the board neither abused its discretion nor clearly disregarded the Open Meetings Act by failing to publicly vote on whether to adjourn the public hearing to deliberate and by failing to publicly vote on the matters at issue following deliberations); , 6th Dist. No. OT-12-008, 2013-Ohio-722, ¶ 15

c. County political party central committees

The convening of a county political party central committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacated public offices, is not a "meeting" as defined by R.C. 121.22(B)(2). Thus, R.C. 121.22 does not apply to such a gathering.[950]

d. Collective bargaining

Collective bargaining meetings between public employers and employee organizations are private and are not subject to the Open Meetings Act.[951]

(holding that board of zoning appeals was acting in its quasi-judicial capacity in reviewing applications for conditional use);
, 8th Dist. No. 99770, 2013-Ohio-5585, ¶¶ 44-46 (holding that board of review was acting in quasi-judicial capacity in adjudicating tax dispute between the city commissioner of assessments and licenses and the taxpayer).

[950] 1980 Ohio Op. Att'y Gen. No. 083; *see also Jones v. Geauga Cty. Republican Party Cent. Commt.*, 11th Dist. No. 2016-G-0056, 2017-Ohio-2930, ¶ 35 (upholding the trial court's dismissal of the case because the meeting at issue concerned purely internal affairs, not public business, and was therefore not subject to the Open Meetings Act).

[951] R.C. 4117.21; *see also Springfield Local School Dist. Bd. of Edn. v. Ohio Assn. of Pub. School Emps.*, 106 Ohio App.3d 855, 869 (9th Dist. 1995) (finding that R.C. 4117.21 manifests a legislative interest in protecting the privacy of the collective bargaining process);
, 12th Dist. No. CA2007-03-066, 2007-Ohio-4218, ¶¶ 6-10 (finding that school board's consideration of a proposed collective bargaining agreement with the school district's teachers was properly held in a closed session because the meeting was not an executive session but was a "collective bargaining meeting," which, under RC. 4117.21, was exempt from the open meeting requirements of R.C. 121.22).

II. Chapter Two: Duties of a Public Body

The Open Meetings Act requires public bodies to provide: (A) openness; (B) notice; and (C) minutes.

A. Openness

The Open Meetings Act declares all meetings of a public body to be public meetings open to the public at all times.[952] The General Assembly mandates that the Act be liberally construed to require that public officials take official action and "conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law."[953]

1. Where meetings may be held

A public body must conduct its meetings in a venue that is open to the public.[954] Although the Open Meetings Act does not specifically address where a public body must hold meetings, some authority suggests that a public body must hold meetings in a public meeting place[955] that is within the geographical jurisdiction of the public body.[956] Clearly, a meeting is not "open" when the public body has locked the doors to the meeting facility.[957]

Where space in the facility is too limited to accommodate all interested members of the public, closed circuit television may be an acceptable alternative.[958] Federal law requires that a meeting place be accessible to individuals with disabilities.[959]

2. Method of voting

Unless a particular statute requires a specific 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, such as voice vote, show of hands, or roll call.[960] The Open Meetings Act only specifies the method of voting when a public body is adjourning into executive session by requiring that the vote for that purpose be by roll call.[961] The Act does not specifically address the use of secret ballots; however, the Ohio Attorney General has opined that a public body may not vote in an open meeting by secret ballot.[962] Voting by secret ballot contradicts the openness requirement of the Open Meetings Act by hiding the decision-making process from public view.

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[952] R.C. 121.22(C).
[953] R.C. 121.22(A).
[954] R.C. 121.22(C); , 66 Ohio St.3d 32, 35, 1993-Ohio-204 (locking the doors to the meeting hall, whether or not intentional, is not an excuse for failing to comply with the requirement that meetings be open to the public); , 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶ 22 (finding that a public body may place limitations on the time, place, and manner of access to its meetings, as long as the restrictions are content neutral and narrowly tailored to serve a significant governmental interest).
[955] , 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶ 24 ("While [the Open Meetings Act] does not state where a public body must hold its public meetings, it has been held that the public body must use a public meeting place."); 1992 Ohio Op. Att'y Gen. No. 032.
[956] 1992 Ohio Op. Att'y Gen. No. 032; 1944 Ohio Op. Att'y Gen. No. 7038.
[957] , 149 Ohio App.3d 201, 2002-Ohio-4660, ¶¶ 33-35 (6th Dist.).
[958] *Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995) (finding the Ohio Turnpike Commission dealt with the large crowd in a reasonable and impartial manner).
[959] 42 U.S.C. § 12101 (Americans with Disabilities Act of 1990, P.L. §§ 201-202) (providing that remedy for violating this requirement would be under the ADA and does not appear to have any ramifications for the public body under the Open Meetings Act).
[960] *But see State ex rel. Roberts v. Snyder*, 149 Ohio St. 333, 335 (1948) (finding that council was without authority to adopt a conflicting rule where enabling law limited council president's vote to solely in the event of a tie under statute that preceded enactment of Open Meetings Act).
[961] R.C. 121.22(G).
[962] 2011 Ohio Op. Att'y Gen. No. 038 (providing that secret ballot voting by a public body is antagonistic to the ability of the citizenry to observe the workings of their government and to hold their government representatives accountable). *But see* , 8th Dist. Cuyahoga No. 105281, 2017-Ohio-8484, ¶ 19 (finding that a vote by handwritten ballot, in open session, where the ballots identified each councilmember's name with their respective vote and were made public record, was not a secret vote as explained in 2011 Ohio Op. Att'y Gen. No. 038).

3. Right to hear but not to be heard or to disrupt

All meetings of any public body are declared to be public meetings open to the public *at all times*.[963] A court found that members of a public body who whispered and passed documents among themselves constructively closed that portion of their meeting by intentionally preventing the audience from hearing or knowing the business the body discussed.[964] However, the Open Meetings Act does not provide (or prohibit) attendees the right to be heard at meetings, and a public body may place limitations on the time, place, and manner of access to its meetings, as long as the restrictions are content neutral and narrowly tailored to serve a significant governmental interest.[965] Further, a disruptive person waives his or her right to attend meetings, and the body may remove that person from the meeting.[966]

4. Audio and video recording

A public body cannot prohibit the public from audio or video recording a public meeting.[967] A public body may, however, establish reasonable rules regulating the use of recording 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.[968]

5. Executive sessions

Executive sessions (discussed below in Chapter Three), are an exemption to the requirement that public bodies conduct public business in meetings that are open to the public; however, public bodies may not vote or take official action in an executive session.[969]

B. Notice

Every public body must establish, by rule, a reasonable method for notifying the public in advance of its meetings.[970] The public body's notice rule must provide for "notice that is consistent and actually reaches the public."[971] The requirements for proper notice vary depending upon the type of meeting a public body is conducting, as detailed in this section.

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[963] R.C. 121.22(C); *Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995); *Community Concerned Citizens, Inc. v. Union Twp. Bd. of Zoning Appeals*, 66 Ohio St.3d 452 (1993); 1992 Ohio Op. Att'y Gen. No. 032; *see also*, 2007 Ohio Op. Att'y Gen. No. 019;
, 11th Dist. No. 2012-T-0035, 2013-Ohio-881, ¶¶ 15, 19-29 (holding that, while the Public Records Act permits a requester to remain anonymous when making a public records request, the Open Meetings Act does not have a similar anonymity requirement. As a result, a public body can require attendees at meetings to disclose their identities by signing a sign-in sheet as long as the practice is content-neutral and narrowly tailored to serve a significant governmental interest.).

[964] *Manogg v. Stickle*, 5th Dist. No. 97CA00104, 1998 WL 516311 (1998).

[965] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (holding that R.C. 121.22 does not require that a public body provide the public with an opportunity to comment at its meetings, but if public participation is permitted, it is subject to the protections of the First and Fourteenth Amendments); *Forman v. Blaser*, 3d Dist. No. 13-87-12, 1988 WL 87146 (1988) (R.C. 121.22 guarantees the right to observe a meeting, but not necessarily the right to be heard); , 11th Dist. No 2012-T-0035, 2013-Ohio-881, ¶¶ 19-29.

[966] , 10th Dist. No. 15AP-666, 2016-Ohio-1035, ¶¶ 25-27 (no violation of Open Meetings Act where disruptive person is removed); *Forman v. Blaser*, 3d Dist. No. 13-87-12, 1988 WL 87146 (1988) ("When an audience becomes so uncontrollable that the public body cannot deliberate, it would seem that the audience waives its right to, or is estopped from claiming a right under the Sunshine Law to continue to observe the proceedings."); *see also Jones v. Heyman*, 888 F.2d 1328, 1333 (11th Cir. 1989) (holding no violation of 1st and 14th Amendments when disruptive person was removed from a public meeting).

[967] , 4th Dist. No. 04CA44, 2005-Ohio-2869, ¶¶ 14-15 (finding trustees violated R.C. 121.22 by banning videotaping).

[968] *Kline v. Davis*, 4th Dist. Nos. 00CA32, 01CA13, 2001-Ohio-2625 (finding blanket prohibition on recording a public meeting not permissible); 1988 Ohio Op. Att'y Gen. No. 087 (opining that trustees have authority to adopt reasonable rules for use of recording equipment at their meetings); *see also* , 10th Dist. Nos. 11AP-421, 11AP-422, 2011-Ohio-6728 (holding that, when rule allowed board to designate reasonable location for placement of recording equipment, requiring appellant's court reporter to move to the back of the room was reasonable, given the need to transact board business).

[969] R.C. 121.22(A); *Mansfield City Council v. Richland Cty. Council AFL-CIO*, 5th Dist. No. 03CA55, 2003 WL 23652878 (2003) (reaching a consensus to take no action on a pending matter, as reflected by members' comments, is impermissible during an executive session).

[970] R.C. 121.22(F); *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997) ("Typically, one would expect regular meetings to be scheduled well in advance ....").

[971] , 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶ 24; , 147 Ohio App.3d 268, 272 (2d Dist. 2002).

1. Types of meetings and notice requirements

a. Regular meetings

"Regular meetings" are those held at prescheduled intervals, such as monthly or annual meetings.[972] A public body must establish, by rule, a reasonable method that allows the public to determine the *time* and *place* of regular meetings.[973]

b. Special meetings

A "special meeting" is any meeting other than a regular meeting.[974] A public body must establish, by rule, a reasonable method that allows the public to determine the *time*, *place*, and *purpose* of special meetings[975] and conforms with the following requirements:

- Public bodies must provide at least 24-hours advance notification of special meetings to all media outlets that have requested such notification,[976] except in the event of an emergency requiring immediate official action (see "emergency meetings," below).
- When a public body holds a special meeting to discuss particular issues, the statement of the meeting's purpose must specifically indicate those issues, and the public body may only discuss those specified issues at that meeting.[977] When a special meeting is simply a rescheduled "regular" meeting occurring at a different time, the statement of the meeting's purpose may be for "general purposes."[978] Discussing matters at a special meeting that were not disclosed in the notice of purpose, either in open session or executive session, is a violation of the Open Meetings Act.[979]

c. Emergency meetings

An emergency meeting is a type of special meeting that a public body convenes when a situation requires immediate official action.[980] Rather than the 24-hours advance notice usually required, a

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[972] 1988 Ohio Op. Att'y Gen. No. 029; *Katterhenrich v. Fed. Hocking Local School Dist. Bd. of Edn.*, 121 Ohio App.3d 579, 587 (4th Dist. 1997).

[973] R.C. 121.22(F); *see also Wyse v. Rupp*, 6th Dist. No. F-94-19, 1995 WL 547784 (1995) (finding a public body must specifically identify the time at which a public meeting will commence).

[974] *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97, 100 (1990) ("The council either meets in a regular session or it does not, and any session that is not regular is special."); 1988 Ohio Op. Att'y Gen. No. 029 (opining that, "[w]hile the term 'special meeting' is not defined in R.C. 121.22, its use in context indicates that a reference to all meetings other than 'regular' meetings was intended").

[975] R.C. 121.22(F); *see also* , 147 Ohio App.3d 268, 272-73 (2d Dist. 2002) (holding that a board violated R.C. 121.22(F) by failing to establish, by rule, method to provide reasonable notice to the public of time, place, and purpose of special meetings); , 74 Ohio St.3d 113, 119-20 (1995) (holding that policy adopted pursuant to R.C. 121.22(F) that required notice of "specific or general purposes" of special meeting was not violated when general notice was given that nonrenewal of contract would be discussed, even though ancillary matters were also discussed).

[976] R.C. 121.22(F); 1988 Ohio Op. Att'y Gen. No. 029.

[977] , 7th Dist. No. 15 MO 0011, 2016-Ohio-4663, ¶¶ 35-36, 40-43 (finding special meeting notice of "2015-2016 school year" was not specific enough to meeting's purpose to discuss a school closure, and large crowds did not prove notice was sufficient); , 12th Dist. No. CA2012-02-013, 2013-Ohio-1111 (finding school board failed to comply with special meeting notice requirements when notice indicated that the purpose of the special meeting was "community information," but during the meeting the board entered executive session "to discuss negotiations with public employees concerning their compensation and other terms and conditions of their employment"); *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995).

[978] *Jones v. Brookfield Twp. Trustees*, 11th Dist. No. 92-T-4692, 1995 WL 411842 (1995); *see also Satterfield v. Adams Cty. Ohio Valley School Dist.*, 4th Dist. No. 95CA611, 1996 WL 655789 (1996) (holding that, although specific agenda items may be listed, use of agenda term "personnel" is sufficient for notice of special meeting).

[979] *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. No. L-97-1240, 1998 WL 172819 (1998) (finding business transacted at special meetings exceeded scope of published purpose and thus violated R.C. 121.22(F)). *But see* , 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237 (finding that the Board did not exceed the scope of the special meeting notice when it went into executive session, which was held in compliance with the R.C. 121.22(G)(1) requirements for an executive session, because there is no prohibition on public bodies holding executive sessions in emergency meetings).

[980] , 147 Ohio St.3d 322, 2016-Ohio-5449, ¶¶ 13-17 (holding that "emergency" meeting improper because there was no suggestion of any emergency that would necessitate such a meeting); *Neuvirth v. Bd. of Trustees of Bainbridge Twp.*, 11th Dist. No. 919, 1981 WL 4407 (1981) (finding the meetings were not emergencies since there was evidence that matters could have been scheduled any time in the preceding two or three months, and the public body could not postpone considering the matter until the last minute and then claim an emergency). *But see* , 11th Dist. Portage No. 2-16-P-0057, 2017-Ohio-4237, ¶ 39 (finding no support for relator's argument "that an emergency session is invalid under R.C. 121.22(F) where a public body decides not to take official action at the close of the session.").

public body scheduling an emergency meeting must **immediately** notify all media outlets that have specifically requested such notice of the time, place, and purpose of the emergency meeting.[981] The purpose statement must comport with the specificity requirements discussed above.

2. Rules requirements

The Open Meetings Act requires every public body to adopt rules establishing reasonable methods for the public to determine the time and place of all regularly scheduled meetings, and the time, place, and purpose of all special meetings.[982] Those rules must include a provision for any person, upon request and payment of a reasonable fee, to obtain reasonable advance notification of all meetings at which any specific type of public business is to be discussed.[983] The statute suggests that provisions for advance notification may include mailing the agenda of meetings to all subscribers on a mailing list or mailing notices in self-addressed, stamped envelopes provided by the person requesting notice.[984]

3. Notice by publication

Courts have found that publication of meeting information in a newspaper is one reasonable method of noticing the public of its meetings.[985] This method, however, does not satisfy the notice requirement if the public body does not have a rule providing for it or if the newspaper has discretion not to publish the information.[986] Courts have addressed situations in which the media misprints meeting information and have not found a violation of the notice requirement.[987] Many public bodies that adopt some other means of notice by rule also notify their local media of all regular, special, and emergency meetings as a courtesy.

C. Minutes

1. Content of minutes

A public body must keep full and accurate minutes of its meetings.[988] Those minutes are not required to be a verbatim transcript of the proceedings, but they must include enough facts and information to permit the public to understand and appreciate the rationale behind the public body's decisions.[989] The Ohio Supreme Court holds that minutes must include more than a record of roll call votes, and that minutes are inadequate when they contain inaccuracies that are not

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[981] R.C. 121.22(F).
[982] R.C. 121.22(F).
[983] R.C. 121.22(F); , 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶¶33-37.
[984] These requirements notwithstanding, many courts have found that actions taken by a public body are not invalid simply because the body failed to adopt notice rules. These courts reason that the purpose of the law's invalidation section (R.C. 121.22(H)) is to invalidate actions taken when insufficient notice of the meeting was provided. *See* , 147 Ohio App.3d 268, 271 (2d Dist. 2002); *Hoops v. Jerusalem Twp. Bd. of Trustees*, 6th Dist. No. L-97-1240, 1998 WL 172819 (1998); *Barbeck v. Twinsburg Twp.*, 73 Ohio App.3d 587 (9th Dist. 1992).
[985] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993); , 147 Ohio App.3d 268, 272 (2d Dist. 2002) ("If the board would establish a rule providing that it would notify these newspapers and direct the newspapers to publish this notice consistently, it would satisfy the first paragraph of R.C. 121.22(F).")
[986] , 147 Ohio App.3d 268, 272 (2d Dist. 2002).
[987] *Black v. Mecca Twp. Bd. of Trustees*, 91 Ohio App.3d 351, 356 (11th Dist. 1993) (finding chairman of zoning commission testified that he correctly reported to newspaper the meeting time but newspaper mispublished it); , 3d Dist. No. 1-03-46, 2003-Ohio-6288 (finding no violation from newspaper's misprinting of meeting start time when village had three separate methods of providing notice of its meetings and village official made numerous phone calls to newspaper requesting correction).
[988] , 76 Ohio St.3d 416, 420 (1996); , 3d Dist. No. 12-13-05, 2014-Ohio-2717.
[989] *See generally* , 116 Ohio St.3d 88, 2007-Ohio-5542 (construing R.C. 121.22, 149.43, and 507.04 together, a township fiscal officer has a duty to maintain full and accurate minutes and records of the proceedings as well as the accounts and transactions of the board of township trustees); , 76 Ohio St.3d 416 (1996); , 92 Ohio St.3d 54 (2001); , 5th Dist. No. 12-CA-8, 2013-Ohio-2295, ¶¶ 9-11 (finding that, absent evidence as to any alleged missing details or discussions, meeting minutes providing the resolution number being voted on and noting that a vote was taken were not too generalized).

corrected.[990] A public body cannot rely on sources other than their approved minutes to argue that their minutes contain a full and accurate record of their proceedings.[991]

Because executive sessions are not open to the public, the meeting minutes need to reflect only the general subject matter of the executive session via the motion to convene the session for a permissible purpose or purposes (see "Executive Session," discussed later in Chapter Three).[992] Including details of members' pre-vote discussion following an executive session may prove helpful, though. At least one court has found that the lack of pre-vote comments reflected by the minutes supported the trial court's conclusion that the public body's discussion of the pros and cons of the matter at issue must have improperly occurred during executive session.[993]

2. *Making minutes available "promptly" as a public record*

A public body must promptly prepare, file, and make available its minutes for public inspection.[994] The term "promptly" is not defined. One court has adopted the definition applied by courts to the Public Records Act (without delay and with reasonable speed, depending on the facts of each case), to define that term in the Open Meetings Act.[995] The final version of the official minutes approved by members of the public body is a public record.[996] Note that a draft version of the meeting minutes that the public body circulates for approval,[997] as well as the clerk's handwritten notes used to draft minutes,[998] may also be public records.

3. *Medium on which minutes are kept*

Because neither the Open Meetings Act nor the Public Records Act addresses the medium on which a public body must keep the official meeting minutes, a public body may make this determination for itself. Some public bodies document that choice by adopting a formal rule or by passing a resolution or motion at a meeting.[999] Many public bodies make a contemporaneous audio recording of the meeting to use as a back-up in preparing written official minutes. The Ohio Attorney General has opined that such a recording constitutes a public record that the public body must make available for inspection upon request.[1000]

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990 , 76 Ohio St.3d 416, 419 (1996); , 92 Ohio St.3d 54,58 (2001).

991 , 92 Ohio St.3d 54, 58 (2001); , 3d Dist. No. 12-13-05, 2014-Ohio-2717, ¶¶ 33-37. *But see Shaffer v. Village of W. Farmington*, 82 Ohio App.3d 579, 585 (11th Dist. 1992) (holding that minutes may not be conclusive evidence as to whether roll call vote was taken).

992 R.C. 121.22(C).

993 , 161 Ohio App.3d 372, 380, 2005-Ohio-2868 (4th Dist.).

994 R.C. 121.22(C); *see also* , 76 Ohio St.3d 416 (1996); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990) (finding that, because the members of a public body had met as a majority group, R.C. 121.22 applied, and minutes of the meeting were therefore necessary); , 92 Ohio St.3d 54, 57 (2001) (finding that audiotapes that are later erased do not meet requirement to maintain minutes).

995 , 12th Dist. No. CA2012-02-013, 2013-Ohio-1111, ¶ 33 (reading R.C. 121.22 in pari materia with R.C. 3313.26, school board failed to "promptly" prepare minutes where it was three months behind in approving minutes and did not approve minutes at the next respective meeting).

996 R.C. 121.22(C).

997 , 12th Dist. No. CA2008-08-081, 2009-Ohio-2448, ¶ 28.

998 , 4th Dist. No. 12CA32, 2013-Ohio-5415, ¶¶ 19-30.

999 In , 92 Ohio St.3d 54, 57 (2001), the Ohio Supreme Court found the council's contention that audiotapes complied with Open Meetings Act requirements to be meritless because they were not treated as official minutes, e.g., council approved written minutes, did not tape all meetings, and voted to erase tapes after written minutes had been approved.

1000 2008 Ohio Op. Att'y Gen. No. 019 (opining that an audio tape recording of a meeting that is created for the purpose of taking notes to create an accurate record of the meeting is a public record for purposes of R.C. 149.43, that the audio tape recording must be made available for public inspection and copying, and retained in accordance with the terms of the records retention schedule for such a record).

D. Modified Duties of Public Bodies under Special Circumstances

1. Declared emergency[1001]

During a declared emergency, R.C. 5502.24(B) provides a limited exemption to fulfilling the requirements of the Open Meetings Act. If, due to a declared emergency, it becomes "imprudent, inexpedient, or impossible to conduct the affairs of local government at the regular or usual place," the governing body may meet at an alternate site previously designated (by ordinance, resolution, or other manner) as the emergency location of government.[1002] Further, the public body may exercise its powers and functions in light of the exigencies of the emergency without regard to or compliance with time-consuming procedures and formalities of the Open Meetings Act. Even in an emergency, however, there is no exemption to the "in person" meeting requirement of R.C. 121.22(C), and the provision does not permit the public body to meet by teleconference.[1003]

2. Municipal charters

The Open Meetings Act applies to public bodies at both the state and local government level. However, because the Ohio Constitution permits "home rule" (self-government), municipalities may adopt a charter under which their local governments operate.[1004] A charter municipality has the right to determine by charter the manner in which its meetings will be held.[1005] Charter provisions take precedence over the Open Meetings Act when the two conflict.[1006] If a municipal charter includes specific guidelines regarding the conduct of meetings, the municipality must abide by those guidelines.[1007] In addition, if a charter expressly requires that all meetings of the public bodies must be open, the municipality may not adopt ordinances that permit executive session.[1008]

[1001] "Emergency" is defined as "any period during which the congress of the United States or a chief executive has declared or proclaimed that an emergency exists." R.C. 5502.21 (F). "Chief executive" is defined as "the president of the United States, the governor of this state, the board of county commissioners of any county, the board of township trustees of any township, or the mayor or city manager of any municipal corporation within this state." R.C. 5502.21(C).

[1002] R.C. 5502.24(B).

[1003] 2009 Op. Att'y Gen. No. 034; R.C. 5502.24(B).

[1004] Ohio Const., Art. XVIII, §§ 3, 7; *see also* , 74 Ohio St.3d 676 (1996); *State ex rel. Fenley v. Kyger*, 72 Ohio St.3d 164 (1995); *State ex rel. Fairfield Leader v. Ricketts*, 56 Ohio St.3d 97 (1990); *State ex rel. Craft v. Schisler*, 40 Ohio St.3d 149 (1988); *Fox v. Lakewood*, 39 Ohio St.3d 19 (1988).

[1005] *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165, 168 (1988) (finding it unnecessary to decide the applicability of the Open Meetings Act because the charter language expressly provided for open meetings and encompassed the meeting at issue); *Hills & Dales, Inc. v. Wooster*, 4 Ohio App.3d 240, 242-43 (9th Dist. 1982) (finding a charter municipality, in the exercise of its sovereign powers of local self-government as established by the Ohio Constitution need not adhere to the strictures of R.C. 121.22, and noting there is "nothing in the Wooster Charter which mandates that all meetings of the city council and/or the city planning commission must be open to the public").

[1006] *State ex rel. Lightfield v. Village of Indian Hill*, 69 Ohio St.3d 441, 442 (1994) ("In matters of local self-government, if a portion of a municipal charter expressly conflicts with a parallel state law, the charter provisions will prevail."); , 8th Dist. Cuyahoga No. 104375, 2017-Ohio-1038 (holding that the city council did not have to follow the mandates of the Open Meetings Act when its charter permitted it to maintain its own rules, and those rules distinguished council meetings from special meetings and made recording minutes of council meetings discretionary); , 11th Dist. Trumbull No. 2016-T-0010, 2017-Ohio-7957, ¶¶ 32-35.

[1007] *State ex rel. Bond v. Montgomery*, 63 Ohio App.3d 728, 736 (1st Dist. 1989); *Johnson v. Kindig*, 9th Dist. No. 00CA0095, 2001 WL 929378 (2001) (finding that, when charter explicitly states that all meetings shall be public and contains no explicit exemptions, charter's reference to Open Meetings law is insufficient to allow for executive sessions).

[1008] , 74 Ohio St.3d 676 (1996); *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St.3d 165 (1998); *see also State ex rel. Gannett Satellite Information Network, Inc. v. Cincinnati City Council*, 137 Ohio App.3d 589, 592 (1st Dist. 2001) (finding that, when a city charter mandates all meetings be open, rules of council cannot supersede this mandate).