



LOBBYISTS FOR CITIZENS

May 8, 2019

Ohio Attorney General
Public Records Unit
30 E. Broad Street, 16th Floor
Columbus, OH 43215

Subject: Violation of Open Meetings Act – ORC 121.22

To Whom it May Concern:

Lobbyists for Citizens is a 501 c (4) Non-Profit organization dedicated to upholding honesty and transparency in government at all levels. We are very concerned that there was a violation of ORC 121.22 “The Open Meetings Act”.

On Tuesday, February 19, 2019, there was a meeting between the Lake County Commissioners and the Lake County Visitors Bureau, Inc.. The meeting was requested by Mr. Scott Dockus, Executive Director of the LCVB, to discuss several issues including the distribution of the 1% Tourism fund held by the Lake County Commissioners

The meeting took place in the 5th floor meeting room of the Lake County Administration Building, and was attended by Lake County Commissioners Jerry Cirino and John Hamercheck, LCVB Executive Director, Scott Dockus, LCVB Board of Directors President Amy Sabath, and a cadre of employees and supporters of the Visitors Bureau.

Lobbyists for Citizens (LFC) was told about the meeting and Mr. Dockus met the LFC representative, Brian Massie, at the Visitors Bureau office and informed him that the meeting was scheduled for the 5th floor of the Administration Building. Since Mr. Dockus knew a LFC representative would be in attendance, he gave tacit approval for Mr. Massie to be at the meeting. Commissioner Cirino, upon seeing Mr. Massie sitting in the corner of the office, asked Mr. Massie if he could speak to him outside of the office. At that time, Commissioner Cirino asked Mr. Massie to leave the meeting since nothing was going to be decided; therefore, in his opinion, it was not a public meeting.

- The Lake County Visitors Bureau is registered with the State of Ohio as a 501 c (3) non-profit, and with the Internal Revenue Service as a 501 c (6), and claims exemption from the Open Meetings Act and the Public Records Act because of their corporate status.
- The Lake County Commissioners’ legal counsel, Michael L. DeLeone, claims that Commissioner Cirino did not violate Ohio’s Open Meetings Act. A copy of his email providing the case law for his ruling is enclosed. (Exhibit A)

Lobbyists for Citizens believes that both the Lake County Visitors Bureau and the Lake County Commissioners are incorrect for these reasons:

A. The Lake County Visitors Bureau’s corporate status has been pierced for these reasons:

1. **They are a “functional equivalent” of a public office, and should be declared a public body.**



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Under O.R.C. 149.011, Chapter One, Section A (2) of the Ohio Public Records Act, the functional equivalency test includes: (Exhibit B)

(a) **Whether the entity performs a government function** – The sole mission of the LCVB is the promotion of Lake County, Ohio.

(b) **The level of government funding** – The LCVB is funded solely from public money collected by the 3% Hotel tax from the visitors staying at hotels in Lake County.

(c) **The extent of government involvement or regulation** – The Lake County Commissioners control 1% of the 3% Hotel tax collected; and the memorandum of understanding (Exhibit C) definitely shows that there is government involvement and regulation. The memorandum of understanding does not appear correct to us since it does not have the correct legal name of the Visitors Bureau, and should be signed by the Commissioners not the County Administrator.

The Lake County Commissioners appoint the Board Members to the Lake County Visitors Bureau Board of Directors. Commissioner Jerry Cirino appointed Board President Ms. Amy Sabath to the Visitors Bureau Board of Directors. (Exhibit D)

2. **They do not have the required dues paying members as required by the O.R.C.**

We have attached their IRS form 990 for the year 2017, and it clearly indicates that they are registered with the Internal Revenue Service as a 501 c (6) non-profit. (Exhibit E) However, the Ohio Secretary of State shows in their Articles of Incorporation that they are a 501 c (3) non-profit. (Exhibit F)

IRC 501 (c) (6) regulation (Exhibit G) indicates that “It must be a membership organization and have a meaningful extent of membership support”.

3. **O.R.C. 149.011(A) (2) Private Entities Can Be “Public Offices”**

From this section we learned: “In general, the more it can be shown that a private entity is performing a government function, controlled, regulated, and/or created by the government, the more likely a court will determine that it is a “public institution”; and therefore, a “public office” subject to the Public Records Act”. (Exhibit B)

B. The Lake County Commissioners are incorrect in their assertion that the meeting was merely “to gather information, investigate, or conduct fact findings, ask questions, answer questions, and make statements”.

1. **This was pre-arranged meeting of public business by a majority of members of a public body.**

O.R.C Section 121.33 provides this definition of a “public meeting”.

(B) (2) “Meeting” means any prearranged discussion of the public business of the public body by the majority of its members. (Exhibit H)



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A legal ruling decided in October 2, 2000 (Exhibit I) stated that the Open Meetings Act defines a meeting as “any prearranged discussion of the public business of the public body by a majority of its members. A discussion entails “an exchange of words, comments or ideas” by members of the public body with one another.”

We have enclosed the email chain (Exhibit J) (total of 10 emails) received that clearly indicates that the meeting pre-arranged, was requested by Scott Dockus (email #1), and approved by Commissioner Jerry Cirino.

2. The meeting was requested by the LCVB to discuss the 1% Tourism Fund held for the LCVB by the Lake County Commissioners.

The email #1 (Exhibit J) clearly indicates that Scott Dockus wanted to meet to discuss the 1% fund held by the Commissioners. Therefore, we contend that this was a budget meeting, open to the public, similar to the other budget meetings that Lobbyists for Citizens has attended.

3. A majority of Commissioners and the Executive Director and Board President of the LCVB were in attendance.

Lake County Commissioners Jerry Cirino, and John Hamercheck, and Lake County Visitors Bureau Executive Director Scott Dockus, and their Board President, Ms. Amy Sabath, and their Treasurer were in attendance.

In summary, Lobbyists for Citizens believes that we were wrongfully ejected from a public meeting by Lake County Commissioner Jerry Cirino. The meeting held on February 19, 2019 was pre-arranged by public officials, to discuss public money budget issues impacting two public bodies.

Sincerely,

Brian Massie
President
Lobbyists for Citizens
a 501 c (4) Non-Profit