October 18, 2011

Debe Terhar, President
State Board of Education
25 South Front Street, Mail Stop 703
Columbus, Ohio 43215

SYLLABUS: 2011-038

The State Board of Education may not vote in an open meeting by secret ballot. (1980 Op. Att'y Gen. No. 80-083 (syllabus, paragraph 4), overruled.)

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OPINION NO. 2011-038

Debe Terhar, President
State Board of Education
25 South Front Street, Mail Stop 703
Columbus, Ohio 43215

Dear President Terhar:

You have requested an opinion whether the State Board of Education (Board) may vote by secret ballot during an open meeting of the Board. For the reasons discussed below, we conclude that the Board may not vote in an open meeting by secret ballot.

R.C. 121.22, Ohio's open meetings law, requires that "[a]ll meetings of any public body" be "public meetings open to the public at all times." R.C. 121.22(C).[1] For purposes of the open meetings law, "[p]ublic body" is defined to include "[a]ny board, commission, committee, council, or similar decision-making body of a state agency, institution, or authority." R.C. 121.22(B)(1)(a). As a board of a state agency, the Department of Education, the Board comes within R.C. 121.22's definition of a public body and is subject to the statute's requirements.[2] *See* R.C. 3301.13; *State ex*

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[1] R.C. 121.22 permits a public body to hold an executive session from which members of the public may be excluded. R.C. 121.22(G); *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 544, 668 N.E.2d 903 (1996); 1985 Op. Att'y Gen. No. 85-049, at 2-176 n.2. An executive session may be held only after certain statutorily prescribed procedures are followed. R.C. 121.22(G); *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d at 544. During an executive session, a public body may discuss only matters specifically enumerated in R.C. 121.22(G) and only if those subjects are specified publicly before the members of the public body adjourn into executive session. For example, a public body may hold an executive session to discuss certain personnel matters, the purchase of property, pending or imminent litigation, or collective bargaining matters. R.C. 121.22(G).

[2] R.C. 3301.05 makes clear that the State Board of Education (Board) is subject to the open meetings law's requirements of R.C. 121.22. R.C. 3301.05 states that "[o]fficial actions of the state board [of education] … shall be transacted only at public meetings open to the public." R.C. 3301.041 also explicitly requires the Board to comply with R.C. 121.22(G).

rel. Nation Bldg. Technical Acad. v. Ohio Dep't of Educ., 123 Ohio St. 3d 35, 2009-Ohio-4084, 913 N.E.2d 977, at ¶17 n.1 (State Board of Education is an agency of the Department of Education).

The purpose of Ohio's open meetings law is to ensure openness and accountability in government. As stated by an analysis prepared by the Legislative Service Commission, R.C. 121.22 is intended to "afford to citizens the maximum opportunity … to observe and participate in the conduct of the public business." Ohio Legislative Service Comm'n, Analysis, Am. Sub. S.B. 74 (1975) (as quoted in 1985 Op. Att'y Gen. No. 85-049, at 2-176). *See also Wyse v. Rupp*, No. F-94-19, 1995 Ohio App. LEXIS 4008, at **11-12 (Fulton County Sept. 15, 1995) ("[a] plain reading of R.C. 121.22 reveals the legislature's intent to require that all public bodies generally conduct their meetings in the open so that the public can have access to the business discussed or transacted therein"); *Thomas v. Bd. of Trs. of Liberty Twp.*, 5 Ohio App. 2d 265, 267, 215 N.E.2d 434 (Trumbull County 1966) (R.C. 121.22 "was originally enacted when the writer of this opinion was a member of the Ohio General Assembly, and he is familiar with its background…. The rationale for this law is that the public has a right to know everything that happens at the meetings of governmental bodies"). Ohio courts also have repeatedly affirmed that R.C. 121.22's mandates are intended to ensure the accountability of public officials. *See State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d 540, 544, 668 N.E.2d 903 (1996) (the "very purpose" of R.C. 121.22 is to prevent elected officials from "meeting secretly to deliberate on public issues *without accountability to the public*" (emphasis added)); *Cincinnati Enquirer v. Cincinnati Bd. of Educ.*, 192 Ohio App. 3d 566, 2011-Ohio-703, 949 N.E.2d 1032, at ¶9 (Hamilton County) (R.C. 121.22 "seeks to prevent public bodies from engaging in secret deliberations with no accountability to the public"); *State ex rel. Cincinnati Enquirer v. Hamilton County Comm'rs*, No. C-010605, 2002-Ohio-2038, 2002 Ohio App. LEXIS 1977, at *2 (Hamilton County Apr. 26, 2002) (the purpose of R.C. 121.22 "is *to assure accountability of elected officials* by prohibiting their secret deliberations on public issues" (emphasis added)).

To this end, R.C. 121.22(A) provides as follows:

> This section shall be liberally construed to require public officials to take official action and to conduct all deliberations upon official business only in open meetings unless the subject matter is specifically excepted by law.

The law also declares that "formal action of any kind is invalid unless adopted in an open meeting of the public body." R.C. 121.22(H).[3] Voting by the members of a public body is a formal action that must occur in a meeting open to the public.[4] *See State ex rel. Schuette v. Liberty Twp. Bd.*

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[3] As previously mentioned, the Board also is subject to the open meetings requirement of R.C. 3301.05, the language of which mirrors the language of R.C. 121.22.

[4] Although R.C. 121.22 permits the members of a public body to deliberate upon certain topics in an executive session closed to the public, a public body is prohibited from adopting any resolutions or rules or taking any formal actions during executive sessions. *See, e.g., Mathews v. E. Local Sch. Dist.*, No. 00CA647, 2001-Ohio-2372, 2001 Ohio App. LEXIS 1677, at **8-10 (Pike County Jan. 4,

of Trs., Delaware App. No. 03-CAH-11064, 2004-Ohio-4431, 2004 Ohio App. LEXIS 4015, at ¶28 (Aug. 19, 2004); *Mathews v. E. Local Sch. Dist.*, No. 00CA647, 2001-Ohio-2372, 2001 Ohio App. LEXIS 1677, at **8-10 (Pike County Jan. 4, 2001); *Angerman v. State Med. Bd. of Ohio*, 70 Ohio App. 3d 346, 352, 591 N.E.2d 3 (Franklin County 1990); 2000 Op. Att'y Gen. No. 2000-010, at 2-55; 1980 Op. Att'y Gen. No. 80-083, at 2-329.

R.C. 121.22 makes limited references to a public body's method of voting. In particular, R.C. 121.22(G) declares that a roll call vote is required when a public body adjourns into executive session. R.C. 121.22(G). A roll call vote requires each member of the public body to vote "yea" or "nay" as the member's name is called, and the vote of each member is placed on the record. *See Robert's Rules of Order, Newly Revised*, 420 (11th ed. 2011). This type of vote "enables constituents to know how their representatives voted on certain measures." *Id.*

R.C. 121.22 does not address explicitly the use of secret ballots by the members of a public body, nor does any other provision of the Revised Code address the use of secret ballots by the Board. Voting by secret ballot is a process of voting by slips of paper on which the voter indicates his vote. *Id.* at 412; *Black's Law Dictionary* 143 (6th ed. 1990). Voting by secret ballot is "used when secrecy of the members' votes is desired." *Robert's Rules of Order, Newly Revised*, at 412. When a secret ballot is used, the vote "is cast in such a manner that the person expressing such choice cannot be identified with the choice expressed." *Black's Law Dictionary* 143 (6th ed. 1990); *see also Webster's Third New International Dictionary* 2052 (unabr. ed. 1993) (defining "secret" as something "kept hidden" or "kept from the knowledge of others, concealed as part of one's private knowledge").

No Ohio courts and only one Attorney General opinion have confronted the use of secret ballot voting by a public body that is subject to the requirements of R.C. 121.22. *See* 1980 Op. Att'y Gen. No. 80-083 (syllabus, paragraph 4) ("R.C. 121.22 does not require a roll call vote or prohibit voting at a meeting subject to that section by 'secret ballot'"). You now ask us to advise the Board whether it may vote by secret ballot during a public meeting of the Board.

The State Board of Education is charged with the "general supervision of the system of public education in the state." R.C. 3301.07. The Board's general powers, duties, and responsibilities are set forth in R.C. Chapter 3301. The Board is required to develop statewide academic standards as well as standards prescribing the minimum standards for elementary and secondary schools in the state, for the education of children with disabilities, and for the effective organization, administration, and supervision of each school. R.C. 3301.07; R.C. 3301.079. The Board also is required to adopt rules governing a broad range of issues, including, for example, establishing a statewide program to assess student achievement, licensing of school district treasurers and business managers, and purchasing and leasing data processing services and equipment. R.C. 3301.074-.075; R.C. 3301.0710. The Board also is responsible for appointing the Superintendent of Public Instruction. R.C. 3301.08. With the exception of those topics set forth in R.C. 121.22(G), which may be discussed in executive session,

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2001); *State ex rel. Kinsley v. Berea Bd. of Educ.*, 64 Ohio App. 3d 659, 664, 582 N.E.2d 653 (Cuyahoga County 1990); 1985 Op. Att'y Gen. No. 85-049, at 2-176 n.2.

the Board must deliberate and take action on these matters in meetings open to the public. *See* R.C. 121.22(A); R.C. 121.22(H). Formal action of the Board is invalid unless the action is taken during an open meeting. R.C. 121.22(H).

The "open meetings" mandate of R.C. 121.22 requires more than simply granting members of the public physical access to a meeting of a public body. The clear intent and purpose of R.C. 121.22 are to ensure openness and accountability in government, and the statute must be read and applied consistent with these goals. *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d at 543 (when construing a statute, our "paramount concern" is to give effect to the intent and purpose of the General Assembly). R.C. 121.22 itself instructs us to liberally construe its mandates in favor of openness. R.C. 121.22(A). *See also State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d 631, 640, 582 N.E.2d 59 (C.P. Lucas County 1990) (the open meetings law "is to be given a broad interpretation to ensure that the official business of the state is conducted openly").

In *Manogg v. Stickle*, No. 97 CA 104, 1998 Ohio App. LEXIS 1961, at **6-7 (Licking County Apr. 8, 1998), the court found that a meeting was not "open" for purposes of R.C. 121.22. In that case, members of the public body, a board of township trustees, whispered among themselves so that "the majority of the discussion among the trustees [was] inaudible." *Id.* at *6. Further, the township trustees passed documents among themselves during the meeting. The trustees' actions "intentionally prevented the audience from hearing or knowing what business was being conducted at the meeting." *Id.* Although nothing in the statute explicitly prohibits public officials from whispering or passing documents among themselves, the court nevertheless held that the township trustees' actions violated the "open meetings" requirement of R.C. 121.22.

Similarly, a meeting is not "open" to the public where members of a public body vote by way of secret ballot. "Voting by ballot is rarely, if ever, used in legislative bodies, because the members vote in a representative capacity and *their constituents are entitled to know how their representatives vote*." *Mason's Manual of Legislative Procedure* § 536 (rev. ed. 2000) (emphasis added). Voting by secret ballot prevents the public from knowing how each of the members of a public body votes on a particular matter. *See Black's Law Dictionary* 143 (6th ed. 1990). Voting by secret ballot produces the same result as where public officials whisper or pass documents among themselves. Members of the public are prevented from knowing a critical part of a public body's decision-making process. Voting by secret ballot is inimical to R.C. 121.22's goals of enabling the public to know the actions of its appointed and elected representatives.

That an "open meeting" requires more than granting physical access to the meeting is further supported by the common understanding of the word "open." Left undefined by statute, "open" must be "read in context and construed according to the rules of grammar and common usage." R.C. 1.42. "Open" has several definitions, all of which indicate that a meeting so qualified must be free from concealment in all its aspects. According to *Black's Law Dictionary* 1117 (7th ed. 1999), "open" means "[v]isible; exposed to public view; not clandestine." Similarly, *Webster's Third New International Dictionary* 1579 (unabr. ed. 1993), defines "open" as "completely free from concealment." These definitions support the conclusion that all aspects of an "open meeting,"

including final actions such as voting, must be "exposed to public view." Voting by secret ballot is the antithesis of the definition of "open."

With the exception of executive sessions, meetings of a public body must be open in all respects in order for the public to hold the public body accountable for its actions. If the votes of the individual members of a public body are denied public scrutiny, the public is unable to properly evaluate the decision-making of the public body and hold its members responsible for their decisions. In addressing whether a public body is permitted to adopt rules for the conduct of its meetings, 1988 Op. Att'y Gen. No. 88-087 noted at 2-418 that R.C. 121.22 was meant to partially codify the public's "right to know" what business takes place in government proceedings. As explained in that opinion:

> In the context of local governmental legislative proceedings the right to know is deeply-rooted: "Our American democracy is partly founded on the premise that *the public has a right, yea even a duty, to oversee the decision-making procedures of those who have been chosen to govern*. A public, not given the right of government oversight, is an uninformed public. With such action, the very integrity of the governing process is threatened." *State ex rel. Plain Dealer Publishing Co. v. Barnes*, 38 Ohio St. 3d 165, 169 (1988) (Douglas, J., concurring).

1988 Op. Att'y Gen. No. 88-087, at 2-419 (emphasis added).

The twin civic duties of overseeing governmental decision-making and holding public officials accountable for their decisions require that the governed possess and enforce a right to know not only why decisions are made (open deliberations), but also the right to know the position and final vote of each individual official. "The statute that exists to shed light on deliberations of public bodies cannot be interpreted in a manner which would result in the public being left in the dark." *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d at 544. Voting by secret ballot thwarts openness and denies the public the ability to hold members of a public body accountable for their decisions, thereby impeding the manifest intent and purpose of R.C. 121.22.

Ohio courts and our opinions also have rejected attempts of public bodies to evade the salutary purposes of the open meetings law. In *State ex rel. Cincinnati Post v. City of Cincinnati*, a city council held back-to-back meetings and purposefully scheduled the meetings so that no gathering of the city council would have a majority of council members present in order to avoid the requirements of the open meetings law. 76 Ohio St. 3d at 541. The Ohio Supreme Court held that "the statute prevents such maneuvering in order to avoid its clear intent." *Id.* at 543. The court further stated that "[t]o find that Cincinnati's game of 'legislative musical chairs' is allowable under the [open meetings law] would be to ignore the legislative intent of the statute, disregard its evident purpose, and allow an absurd result." *Id.* at 544. *See also Manogg v. Stickle*, 1998 Ohio App. LEXIS 1961, at *6 (whispering and passing notes "circumvented the intent of R.C. 121.22"); *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d at 640 (a "governmental decision-making body cannot assign its decisions to a nominally private body in order to shield those decisions from public scrutiny"); 2009 Op. Att'y Gen. No. 2009-034, at 2-233 n.3 ("[m]embers of a public body must not attempt to circumvent the intent of the open meetings law by

conducting a conference call and claiming it does not meet the definition of a 'meeting' of the public body because a majority of the members are not 'present in person'"); 1992 Op. Att'y Gen. No. 92-077, at 2-325 ("[t]o conclude otherwise would allow a public body to circumvent the requirements of R.C. 121.22 merely by assigning to an advisory body those portions of its deliberations of the public business which it seeks to shield from public scrutiny; such a result would be clearly contrary to the legislative intent expressed in R.C. 121.22(A)").

Construing R.C. 121.22 as permitting a public body to vote by secret ballot also produces an unreasonable and absurd consequence. R.C. 1.47(C) (in enacting a statute, it is presumed that "[a] just and reasonable result is intended"); *Canton v. Imperial Bowling Lanes, Inc.*, 16 Ohio St. 2d 47, 242 N.E.2d 566 (1968) (syllabus, paragraph 4) ("[t]he General Assembly will not be presumed to have intended to enact a law producing unreasonable or absurd consequences"); *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d at 543-44. R.C. 121.22(H) requires a public body to adopt a resolution or rule or take formal action "in an open meeting of the public body." While R.C. 121.22 permits a public body's members to deliberate in executive session, the law prohibits them from voting while in executive session. R.C. 121.22(G)-(H). A public body may vote only during a meeting open to the public, and a public body in executive session must return to an open meeting before voting. *Id.* A secret ballot vote during an open meeting is no different from a vote taken during an executive session. In either case, the public is denied the opportunity to know and evaluate the decision-making of the public body and to hold its members accountable for their decisions. It is patently unreasonable to explicitly prohibit a public body from voting during a closed executive session only to permit the public body to vote by secret ballot once it reconvenes in an open meeting.

Finally, where R.C. 121.22 authorizes exceptions to the open deliberations requirement, the law expressly enumerates those exceptions and the procedures that the public body must follow in order to lawfully adjourn to an executive session from which the public may be excluded. R.C. 121.22(G). No similar exceptions permit a public body to take formal actions secretly. Had the General Assembly intended to permit a public body to take formal actions in a manner that excluded the public, it could have done so with similarly explicit language. *See Lake Shore Elec. Ry. Co. v. P.U.C.O.*, 115 Ohio St. 311, 319, 154 N.E. 239 (1926) (had the legislature intended a particular meaning, "it would not have been difficult to find language which would express that purpose," having used that language in other connections); *State ex rel. Enos v. Stone*, 92 Ohio St. 63, 69, 110 N.E. 627 (1915) (if the General Assembly intended a particular result, it could have employed language used elsewhere that plainly and clearly compelled that result).

Accordingly, we conclude that the "open meetings" requirement of R.C. 121.22 is not satisfied when members of a public body, in this instance, the State Board of Education, vote by secret ballot. To conclude otherwise would permit the Board to disregard the primary purpose of the open meetings law by concealing the decision-making of its members from the public.

Other states with open meetings laws that employ language nearly identical to that in R.C. 121.22 have reached the same conclusion. These statutes explicitly require that public bodies conduct business in open meetings and that formal actions of those public bodies occur in an open meeting.

As in the case of R.C. 121.22, the open meetings laws of those states are silent with respect to the members of a public body voting by secret ballot.

As early as 1933, the Illinois Attorney General addressed the use of secret ballots by a public body and concluded that a vote by secret ballot violated the law and public policy. 1933 Ill. Op. Att'y Gen. No. 246, p. 334. The law in question required a "board of supervisors" to "sit with open doors" and declared that "all persons may attend their meetings." *Id.* The Illinois Attorney General reasoned: "[o]f what avail is an open door to the public if the proceedings are secret…. It is no advantage to the citizen to see a member write a name secretly on a ballot unless he is privileged to read what is thereon written." *Id.* at 335. Forty-two years later, the Illinois Attorney General again addressed the issue of secret ballots and reached the same conclusion:

> The public has a right to know how their public officials and representatives vote on issues, not only so they may try to persuade them to change their position or congratulate them on actions they have taken, but also that they may have the necessary information to decide whether they want to retain that person in public office.

1975 Ill. Op. Att'y Gen. No. S-917, p. 3574, at 3576, 1975 Ill. AG LEXIS 37, at *8.

An Illinois appellate court affirmed the conclusions of these two opinions when the court addressed whether a county board was permitted, under Illinois' open meetings law, to vote by secret written ballot in the election of the county board's chairman. *WSDR, Inc. v. Ogle County*, 427 N.E.2d 603 (Ill. App. Ct. 1981). The intent of the Illinois open meetings law is to require that "the actions of public bodies be taken openly." 5 Ill. Comp. Stat. Ann. 120/1 (2011). The law requires that "[a]ll meetings of public bodies shall be open to the public." 5 Ill. Comp. Stat. Ann. 120/2(a) (2011). The court held that a secret ballot for the election violated the state law. "A *secret* ballot … is the antithesis of an open meeting even though the vote was conducted in the presence of the public." *WSDR, Inc. v. Ogle County*, 427 N.E.2d at 604. The court further explained that the votes of public officials "can be highly indicative to their voters and the public of the quality of their public service." *Id.* at 605. Although the public officials sought to avoid antagonism between the board members by keeping their votes private, the court rejected this as a valid reason to vote by secret ballot because "[t]he voters who elected these board members are no longer in a position to judge the competency of their representatives." *Id.*

The Texas Attorney General echoed the same reasoning and concluded that voting by secret ballot violated the Texas open meetings act. Texas law requires that "[a] final action, decision, or vote … may only be made in an open meeting." Tex. Gov't Code Ann. § 551.102 (2011). The Texas Attorney General concluded that "[t]he secret ballot, … when it is used to conceal a public official's vote, … violates the fundamental tenet of an elected or appointed official's ultimate accountability to the electorate. We believe it is the antithesis of the requirements of the Texas Open Meetings Act." Tex. Att'y Gen. Op. No. H-1163, p. 4707 (1978) (citations omitted).

Florida's open meetings law states that "[a]ll meetings … at which official acts are to be taken are declared to be public meetings open to the public at all times, and no resolution, rule, or formal

action shall be considered binding except as taken or made at such meeting." Fla. Stat. § 286.011(1) (2011). The Florida Attorney General concluded that a vote by secret ballot violates this mandate "since the public and the news media are denied the right to know who voted for whom, and the meeting cannot therefore be regarded as 'open to the public at all times.'" Op. Att'y Gen. Fla. 1971-32, 1971 Fla. AG LEXIS 292, at **3-4.

Michigan law provides that "[a]ll decisions of a public body shall be made at a meeting open to the public." Mich. Comp. Laws § 15.263(2) (2011). The Michigan Attorney General found that a vote by secret ballot violated the requirement that meetings be open. "Since the statute requires that a vote be taken at a public meeting, the Legislature clearly intended this vote be open to the public as well." 1977-78 Op. Att'y Gen. Mich. 338, 1978 Mich. AG LEXIS 164, at *2. A Michigan court subsequently reached the same conclusion. *Esperance v. Chesterfield Twp.*, 280 N.W.2d 559 (Mich. App. Ct. 1979). In holding that Michigan's open meetings law prohibits a public body from voting by secret ballot, the court stated as follows: "[i]t can hardly be contended that a vote by secret ballot at an open meeting is any more open than a vote at a closed meeting. In either case the public official has shielded his stand from public scrutiny and accountability." *Id.* at 563.

R.C. 121.22 is intended to ensure openness and accountability in government. To permit the Board to vote by secret ballot is inimical to these purposes and would enable the Board to conceal the decision-making of its members from the public. Rather, a public body must conduct its business in a way that permits the public to know what business is conducted at the meeting, which includes knowledge about the votes cast by individual members of the public body.

We recognize that in 1980 Op. Att'y Gen. No. 80-083 (syllabus, paragraph 4), the Attorney General advised that R.C. 121.22 "does not … prohibit voting at a meeting subject to that section by 'secret ballot.'" The opinion rejected the proposition that R.C. 121.22's "liberal construction" mandate should apply to the method of voting used by the members of a public body. The opinion stated that doing so would add a requirement "not imposed by the specific language of [R.C. 121.22]." 1980 Op. Att'y Gen. No. 80-083, at 2-330. The opinion reasoned that insofar as R.C. 121.22(H) states that formal action of a public body is invalid "unless adopted in an open meeting of the public body," only the meeting itself need be open. *Id.* ("[a]s long as the public body's meeting is open to the public, and complies in all other respects with R.C. 121.22, I am constrained by the plain language of the statute to conclude that it does not … prohibit voting by 'secret ballot'" (footnote omitted)). 1980 Op. Att'y Gen. No. 80-083 appears to have determined that voting by secret ballot is compatible with the plain language of the statute.

Since the issuance of the 1980 opinion, however, Ohio courts, including the Ohio Supreme Court, repeatedly have endorsed a liberal reading of the open meetings law's requirements in the interest of ensuring that the purpose of the law is upheld and preventing public bodies from evading that purpose. *See, e.g.*, *State ex rel. Cincinnati Post v. City of Cincinnati*, 76 Ohio St. 3d at 544; *Manogg v. Stickle*, 1998 Ohio App. LEXIS 1961, at **6-7; *Thomas v. Bd. of Trs. of Liberty Twp.*, 5 Ohio App. 2d at 267; *State ex rel. Toledo Blade Co. v. Econ. Opportunity Planning Ass'n of Greater Toledo*, 61 Ohio Misc. 2d at 640; *see also* 2009 Op. Att'y Gen. No. 2009-034; 1992 Op. Att'y Gen. No. 92-078. The current state of that jurisprudence persuades us that R.C. 121.22's "liberal

construction" mandate should be applied to the method of voting used by the members of a public body in taking formal action at an open meeting. Voting by secret ballot is at variance with the purpose of the open meetings law and only denies the people their right to view and evaluate the workings of their government. Accordingly, a public body that is subject to the requirements of the Ohio open meetings law may not vote in an open meeting by secret ballot. We overrule syllabus, paragraph 4 of 1980 Op. Att'y Gen. No. 80-083.

In conclusion, it is my opinion, and you are hereby advised that the State Board of Education may not vote in an open meeting by secret ballot. (1980 Op. Att'y Gen. No. 80-083 (syllabus, paragraph 4), overruled.)

Very respectfully yours,

MICHAEL DEWINE
Ohio Attorney General