Ohio Attorney General's

Administrative Law Newsletter

Highlighting Recent Cases in Administrative and Sunshine Law

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The Administrative Law newsletter, published twice a year, highlights recent developments in Ohio administrative and sunshine law. Clients of the Ohio Attorney General's Office with questions on specific cases should contact their designated assistant attorney general. The Attorney General's Office also maintains a database of administrative appeals from Ohio common pleas courts. For more information, visit www.OhioAttorneyGeneral.gov or call 800-282-0515. All issues are published in printable PDFs.

Administrative Procedure: Final Order

Galloway v. Firelands Loc. School Dist. Bd. of Educ.
9th Dist. Lorain No. 11CV171845, 2013-Ohio-4264

Superintendent's letter informing employee of the vote of the school board did not constitute a final order or decision of the board pursuant to Ohio Revised Code (R.C.) 2506.01(A) and therefore was not a final appealable order. The court of common pleas had no jurisdiction to hear the appeal.

Administrative Procedure: Judicial Review (Notice of Appeal, Contents)

Williams v. Ohio Bd. of Cosmetology
Franklin C.P. No. 13CVF-10414 (Oct. 23, 2013)

Exact "magic language" of R.C. 119.12 is required in a notice of appeal.

Administrative Procedure: Judicial Review (Business Entity Representation)

Campus Pitt Stop L.L.C. v. Ohio Liquor Control Comm'n
10th Dist. Franklin No. 13AP-622, 2014-Ohio-227

Individual non-attorney members of an LLC improperly filed a notice of appeal on behalf of the LLC. Court dismissed the appeal even though later an attorney made an appearance on behalf of the LLC and filed a memo contra the motion to dismiss. The court noted that filing a notice of appeal is considered the practice of law.

Administrative Procedure: Judicial Review (Additional Evidence [R.C. 2506.03])

Brenneman Brothers v. Allen Cty. Commissioners
3rd Dist. Allen No. 1-13-14, 2013-Ohio-4635, 3 N.E.3d 1231

The court of appeals reviews a decision of the court of common pleas to admit additional evidence pursuant to R.C. 2506.03 under an abuse of discretion standard.

Public Records: Entirety of Response

State ex rel. Bott Law Group LLC v. Ohio Dept. of Natural Resources
10th Dist. Franklin No. 12AP-448, 2013-Ohio-5219

- Agency is required to promptly prepare for inspection or send within a reasonable period copies of *all* requested public records. All means all. The agency's good or bad faith is not probative of the agency's compliance with R.C. 149.43(C)(1). The court concludes that the agency's initial response was incomplete solely because the agency issued a subsequent response.
- Court appears to equate the definition of "prompt" with the requirement that copies be provided within a *reasonable* period of time.
- The agency had not taken necessary steps to recover responsive records "including emails that may have been deleted in violation of [the agency's] records retention policy and records that are stored on personal computers of key employees who subsequently left [the agency]."
- There is no prohibition against a requestor requesting and receiving a public record even if he or she received it before.
- When dealing with a long and complex public records request, although it is the requestor's duty to revise a request, that duty arises only *after* the agency has informed the requestor that the requests is either ambiguous or overly broad.

Public Records: "Aggrieved Person"

State ex rel. Verhovec v. Northwood
6th Dist. Wood No. WD-13-002, 2013-Ohio-5074

Person requesting records can only be "aggrieved" under R.C. 149.351 if he or she requested the records with the goal of actually accessing the records. Here, the goal was to seek forfeiture, so therefore the requester is not "aggrieved."

Public Records: Overbreadth

State ex rel. Carr v. London Corr. Inst.
12th Dist. Madison No. 2012-10-023, 2014-Ohio-1325

Request for all emails and memoranda sent between two individuals is overbroad.

Public Records: Attorney Fees, Statutory Damages

State ex rel. DiFranco v. S. Euclid
138 Ohio St.3d 367, 2014-Ohio-538

- Under the 2007 amendment to the Public Records Act, attorney fees may only be awarded upon a judgment ordering an agency to comply. If the agency has already provided the requested records and the judge dismisses the case for mootness, neither mandatory nor discretionary attorney fees may be awarded.
- No response from the city for two months triggers the statutory damages provision. Public benefit analysis does not apply.

Open Meetings: Quasi-Judicial Acts

Beachland Enterprises Inc. v. Cleveland Bd. of Review
8th Dist. Cuyahoga No. 99770, 2013-Ohio-5585

City board of tax review's hearing and deliberation held in private did not violate the Open Meetings Act. The hearing and deliberation were quasi-judicial acts because they required notice and a hearing and involved the exercise of discretion. They were quasi-judicial acts even though the board lacked subpoena power.

Open Meetings: Pre-Meeting Gatherings

State ex rel. Chrisman v. Clearcreek Twp., Warren Cty.
Warren C.P. No. 11CV80194 (Mar. 11, 2014)

Gatherings of township trustees prior to regular township trustee meetings violated the Open Meetings Act. A majority or all of the trustees were present, deliberations took place, and decisions were made. "The majority always has the power to decide legitimate township business. They, however, cannot do so unless their deliberations are open to the public, scheduled in advance, and proper minutes are recorded of what actions are ultimately taken."