

Ohio Attorney General's Administrative Law Newsletter

Highlighting Recent Cases in Administrative and Sunshine Law



Winter 2014

The Administrative Law newsletter highlights recent developments in Ohio administrative and sunshine law. All issues are published in [printable PDFs](#). 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.

Administrative Procedure: Hearings

Calloway v. Ohio State Med. Bd.

10th Dist. No. 12AP-599, 2013-Ohio-2069

The agency did not present reliable, probative, and substantial evidence of intent to deceive when the only direct evidence on intent was the appellant's denial of such intent and when the form itself was ambiguous as to the requirements of completion.

Denuit v. Ohio State Bd. of Pharmacy

4th Dist. Nos. 11CA11 and 11CA12, 2013-Ohio-2484

The failure of the Ohio Revised Code (R.C.) and board to define the term "gross immorality" does not render the board's findings unsupported by reliable, probative, and substantial evidence and not in accordance with law. The term's meaning is clear and can be ascertained from a dictionary.

Administrative Procedure: Final Adjudication Order

Redding v. Ohio Dept. of Agriculture

Hamilton Cty. CP No. A 1206435 (July 18, 2013)

Final order sent via certified mail and returned "unclaimed" and then resent via ordinary mail and not returned as undeliverable was properly served pursuant to R.C. 119.07. Appeal time commences on the date the order was sent via ordinary mail. Civ.R. 6(E) (three-day mail rule) does not apply to appeals delineated by statute.

Administrative Procedure: Judicial Review

In re. Admin. Appeal Decision Issued by Ohio Dept. of Job & Family Servs., Bur. of State Hearings
11th Dist. No. 2012-A-0058, 2013-Ohio-2817

There is no right to appeal unless provided by statute, regardless of whether the agency includes appeal instructions in its final adjudication order.

Denuit v. Ohio State Bd. of Pharmacy
4th Dist. Nos. 11CA11 and 11CA12, 2013-Ohio-2484

1. Court of common pleas may order a remand to an agency for further consideration under the “other ruling” authority in R.C. 119.12.
2. An order remanding action to the agency is not a final order, but an interlocutory order. The law of the case doctrine does not apply to interlocutory orders.

Public Records: Investigatory Work Product

State ex rel. Toledo Blade Co. v. Toledo
6th Dist. No. L-12-1183, 2013-Ohio-3094

Map created by police showing gang areas is not exempt from public records disclosure as an investigatory work product. It was not created in connection with an actual pending or highly probable criminal prosecution. The court reached this conclusion because police acknowledged the map would not reveal any specific confidential investigatory technique or procedure.

Open Meetings: Meetings

Wilkins v. Harrisburg
10th Dist. No. 12AP-1046, 2013-Ohio-2751

1. An R.C. 121.22 meeting does not occur when less than a majority of the members of the public body is present.
2. Gatherings that are publicly announced, but have less than a majority of members present and are held before and after a public meeting (separated by days and location), are not back-to-back meetings as described in *State ex rel. Cincinnati Post v. Cincinnati*, 76 Ohio St.3d 540 (1996), and therefore are not a meeting for R.C. 121.22 purposes.
3. In the absence of deliberations by or discussion among board members at sessions, the gatherings were not meetings. Here, no allegations or evidence of deliberations was presented.

Open Meetings: Minutes

State ex rel. Dunlap v. Violet Twp. Bd. of Trustees
5th Dist. No. 12-CA-8, 2013-Ohio-2295

Minutes of meeting were sufficient when minutes did not reflect deliberation over resolutions, but reference the resolutions, and when relator presented no evidence showing that deliberations actually took place. **Note:** The court of appeals may have improperly assumed jurisdiction to consider open

meetings issues in an original action. See R.C. 121.22(l)(1) (“[T]he court of common pleas shall issue an injunction ...”)

Open Meetings: Executive session

State ex rel. Dunlap v. Violet Twp. Bd. of Trustees

5th Dist. No. 12-CA-8, 2013-Ohio-2295

1. Motion to go into executive session citing R.C. 121.22(G)(1) for the purpose of discussing “legal issues” and “personnel issues” was insufficient. Motion needed to cite the exact personnel issue from the list set forth in R.C. 121.22(G)(1).
2. Motion to go into executive session “to discuss personnel issues per R.C. 121.22(G)(4) (“Preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment”) is compliant with the Open Meetings Act.

Note: The court of appeals may have improperly assumed jurisdiction to consider open meetings issues in an original action. See R.C. 121.22(l)(1) (“[T]he court of common pleas shall issue an injunction ...”)



For more information on administrative and sunshine law cases, contact your designated assistant attorney general or call the Attorney General’s Help Center at 800-282-0515.