

The 'Open' Book

A guide to Ohio law on public records, open meetings



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The Open Meetings Act: An Overview

With the delta variant triggering renewed concerns about COVID-19, public bodies throughout Ohio are again facing some COVID-related decisions.

Say, for example, that an area school board plans to deliberate and decide whether students must wear masks inside buildings when the new academic year begins. Ohio's Open Meetings Act (Ohio Revised Code Section 121.22) requires the board to conduct that business in an open meeting that the public may attend and observe.

The same holds true for similar discussions and decision-making by a city council, a township board of trustees or any other public body.

In a nutshell, the Open Meetings Act (OMA) mandates that, if a public body is meeting to discuss and vote on or otherwise decide public business, the meeting must be open to the public. Here is an overview of the OMA:

What is a public body?

- A "public body" is any decision-making body at any level of government. That might include any committees or subcommittees of a public body, even if these committees do not make the final decision of the public body.

What qualifies as a "meeting"?

- A "meeting" is a prearranged gathering of a majority of the members of the public body who are discussing or deliberating public business.
- The Open Meetings Act applies to more than "meetings" held in the traditional sense of the word – that is, those held in a meeting room with the public body at the front addressing the public. Instead, the OMA asks whether the majority of the members have held or will hold a prearranged discussion or deliberation of public business. If the answer is "yes," the OMA applies to those discussions or deliberations and the public body must – or should have – complied with the act.
- If, for example, members of a public body are discussing public business via email or text, a court could – and likely would – consider that to be a "meeting," subject to the legal standards of the OMA. A public body could be liable for an OMA violation if it uses such electronic communications to discuss or deliberate public business outside of a traditional public meeting. Further, any of the communications would be public record under Ohio's Public Records Act.

- A public body cannot circumvent the Open Meetings Act by holding back-to-back or serial meetings attended by fewer than a majority of its members, with the same topics of public business discussed at each. Courts will find that such deliberate “round-robin” meetings violate the OMA.
- Simply, a court will not put form over substance. It will look at whether the conduct of the members of the public body meets the definition of a “meeting” under the OMA. If it did and the public body did not comply with the OMA, the public body could be liable for violating its requirements.

What must a public body do if the Open Meetings Act applies?

- Notice: A public body must give notice of its meeting. For a regular meeting, the notice must include the time and place of the meeting. For a special or emergency meeting, the notice must include the time, place and purpose of the meeting.
- Openness: The meeting must be open to the public to attend in-person. Voting by secret ballot and whispering or texting about public business is also prohibited by the “openness” requirement.
- Minutes: A public body must promptly prepare, file and maintain meeting minutes and make them available to the public.

What about executive session?

- Executive session is an exception to the openness requirement, but it applies only to discussions or deliberations (not decisions) regarding a narrow class of topics. Those topics are listed in R.C. 121.22(G).
- A public body must make a motion to go into executive session during an open meeting. The motion must identify with the appropriate level of specificity the topic to be discussed in the executive session. The public body must approve the motion by a roll-call vote.
- Discussions and deliberations in executive session must be limited to the topic set out in the motion. The public body cannot deviate from that topic.
- A public body may not vote or make any decisions in executive session.
- Executive session is not typically confidential under the OMA. Unless there is some statutory or common-law privilege or confidentiality provision that applies, any documents exchanged in executive session are public records.