

OPINION NO. 92-077**Syllabus:**

An advisory committee legislatively created by a board of county commissioners to make recommendations to the board on matters relating to a proposed county jail is a public body subject to the provisions of R.C. 121.22.

To: Rebecca J. Ferguson, Preble County Prosecuting Attorney, Eaton, Ohio
By: Lee Fisher, Attorney General, December 30, 1992

Your predecessor requested an opinion of the Attorney General regarding the applicability of Ohio's "Open Meetings Act," R.C. 121.22, to meetings of an advisory committee created by a board of county commissioners. The particular committee about which you are concerned is composed of twenty-three members representing the townships and municipalities of Preble County. The committee was formed by legislative action of the Preble County Board of Commissioners for the purpose of making recommendations to the board on certain matters relating to a proposed new jail. The board of commissioners specifically sought the advice of the committee on "the need for a new jail" and on the "financing of construction and operation" of such a facility if it is determined to be necessary.

County Commissioners' Responsibilities Concerning County Jail

The board of county commissioners has certain statutory duties concerning the county jail. For example, pursuant to R.C. 307.01(A): "A...jail...shall be provided by the board of county commissioners when, *in its judgment*, [a jail is]...needed." R. C. 307.01(A) further empowers the board of county commissioners to determine the "style, dimensions, and expense" of such jail. *See generally* R.C. 307.02 (authorizing the board of county commissioners to "purchase, for cash or by installment payments, enter into lease-purchase agreements, lease with option to purchase, lease, appropriate, construct, enlarge, improve, rebuild, equip, and furnish, [among other things,] a ... jail").¹ The purpose of the advisory committee you describe is to assist the board of county commissioners with respect to these responsibilities.

The Open Meeting Requirements of R.C. 121.22

R.C. 121.22(C) mandates that all meetings of any public body be "public meetings open to the public at all times," except as expressly provided in that provision or another provision of law. As stated in R.C. 121.22(A): "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." (Emphasis added.) The

¹ Pursuant to R.C. 331.01, the probate judge may, but is not required to, establish a county facilities review board. The purpose of such a board is to "keep fully advised of the condition and management of all charitable or correctional institutions supported in whole or in part by county or municipal taxation, or which are under county or municipal control, and especially the county home, county jail, municipal prisons, and children's home." R.C. 331.04. The board described in your request is not, however a county facilities review board governed by R.C. Chapter 331.

consequences of a public body's noncompliance with the open meeting requirements of R.C. 121.22 are described in R.C. 121.22(H), as follows:

A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body. A resolution, rule, or formal action adopted in an open meeting that results from deliberations in a meeting not open to the public is invalid unless the deliberations were for a purpose specifically authorized in division (G) of this section and conducted at an executive session held in compliance with this section.

R.C. 121.22, thus, requires not only that a public body take final action on public business in an open meeting, but also that all deliberations concerning that final action be conducted in public.

Application of R.C. 121.22(B) to Advisory Committee Created by Board of County Commissioners

R.C. 121.22(B)(1) defines the term "public body" as meaning in part, "any legislative authority or board, commission, *committee*, agency, authority, or similar decision-making body of *any county*, township, municipal corporation, school district, or other political subdivision or local public institution."² An advisory committee is clearly a "committee." By definition, "an assembly or board of persons, to whom the consideration...of any matter is committed or referred, as by a...legislature" is a committee. *Black's Law Dictionary* (5th ed. 1979) 248. The Preble County advisory committee is a group of persons created by legislative action of the board of county commissioners, itself a public body for purposes of R.C. 121.22, to advise and assist the latter in carrying out a portion of its responsibilities concerning a matter of county business. As such, the committee you describe is a committee of the county for purposes of R.C. 121.22, and, therefore, constitutes a public body subject to the open meeting requirements of R.C. 121.22. *See generally State ex rel. Toledo Blade Co. v. University of Toledo Foundation*, 65 Ohio St. 3d 258, __ N.E.2d __ (1992) (concluding that the term "public body," as used in R.C. 149.43, a related statute governing public records, should be read broadly to ensure a comprehensive application of that statute).

² In discussing whether particular entities constitute public bodies for purposes of R.C. 121.22, a number of courts and prior Attorney General opinions have considered the decision-making powers of those entities to be relevant. For example, in *Stegall v. Joint Township District Memorial Hospital*, 20 Ohio App. 3d 100, 102, 484 N.E.2d 1381, 1383 (Auglaize County 1985), the Court of Appeals stated, "[i]t is implied that the board must be a 'decision-making body.'" The extent to which an entity that otherwise falls within the plain language of the definition of "public body" must exercise decision-making authority in order to qualify as a public body for purposes of R.C. 121.22, however, is unclear. *Compare Maser v. City of Canton*, 62 Ohio App. 2d 174, 405 N.E.2d 731 (Stark County 1978) (finding an advisory committee established by city council to advise the council on city personnel matters to be a decision making body) *with* 1979 Op. Att'y Gen. No. 79-110 (advisory committee of a state agency makes decisions only in a general sense and is not, therefore, a decision-making body for purposes of R.C. 121.22). In any event, such prior decisions have generally found advisory committees to be decision-making bodies based on the fact that such committees necessarily make decisions, regardless of how provisional, in formulating their advice.

The appropriateness of this conclusion is supported by the fact that R.C. 121.22 requires the board of county commissioners to deliberate upon official business, except in those instances described in R.C. 121.22, only in open meetings. It follows, therefore, that R.C. 121.22 requires a committee created by the board of county commissioners for the purpose of advising the board about matters which the board itself could discuss only in an open meeting, also to deliberate and formulate its advice about such matters only in public. To 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).

Conclusion

Based on the foregoing discussion, it is my opinion, and you are hereby advised that, an advisory committee legislatively created by a board of county commissioners to make recommendations to the board on matters relating to a proposed county jail is a public body subject to the provisions of R.C. 121.22.