

OPINION NO. 78-059

Syllabus:

The Internal Security Committee, established by the Industrial Commission and the Bureau of Workers' Compensation pursuant to R.C. 4121.22(D), is a public body for purposes of R.C. 121.22.

To: William W. Johnston, Chairman, The Industrial Commission of Ohio,
Columbus, Ohio

By: William J. Brown, Attorney General, October 25, 1978

I have before me your request for a formal opinion. It provides as follows:

The Industrial Commission of Ohio and the Bureau of Workers' Compensation have established the Internal Security Committee as mandated by Revised Code Section 4121.122(D). The issue has arisen as to whether or not this joint committee is a public body as defined in Revised Code Section 121.22.

Therefore, we are requesting your opinion as to whether or not the Internal Security Committee is a public body under the guidelines established in Revised Code Section 121.22.

Further, we request your opinion based upon your answer to the above question to what extent the actions of the Internal Security Committee come under the mandates of Section 121.22.

R.C. 121.22, popularly known as the "sunshine law", provides in part as follows:

(B) As used in this section:

(1) "Public body" means any board, commission, committee, or similar decision-making body of a state agency, institution or authority, and 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.

. . .

(C) All meetings of any public body are declared to be public meetings open to the public at all times.

Its sweeping scope notwithstanding, the foregoing definition has presented certain difficulties. Most notably, problems have arisen in determining whether a particular agency or institution is governmental in nature and whether a particular board or committee is a decision-making body.

In 1976 Op. Att'y Gen. No.76-062, I concluded that the board of trustees of a Comprehensive Mental Health Center did not constitute a public body for purposes of R.C. 121.22. In so concluding, I observed that the center was a privately created non-profit corporation the powers of which were defined not by statute but by its articles of incorporation. In addition, I noted that the trustees of the center possessed none of the characteristics commonly associated with public officials. Thus, the board did not fall within the purview of the statute as expressed in its introductory provision, which calls for a liberal construction requiring "public officials to take official action . . . only in open meetings."

The Internal Security Committee, however, is on a significantly different footing from the board considered in Op. No. 76-062, *supra*. An examination of the nature and composition of the committee reveals that it is possessed of none of the characteristics that I found determinative of private status in the case of a community mental health center.

R.C. 4121.122, which creates the Internal Security Committee, provides in part

as follows:

(D) The commission and the administrator shall appoint a six-member internal security committee composed of three commission employees appointed by the commission. The administrator shall supply to the committee the services of trained investigative personnel and clerical assistance necessary to the committee's duties. The committee shall investigate all claims or cases of criminal violations, abuse of office, or misconduct on the part of bureau or commission employees and shall conduct a program of random review of the processing of workers' compensation claims.

The committee shall deliver to the administrator, the industrial commission, or the governor, any case for which remedial action is necessary. The committee shall maintain a public record of its activities, insuring that the rights of innocent parties are protected, and, once every six months shall report to the governor, the general assembly, the administrator, and industrial commission, the committee's findings, and the corrective actions subsequently taken in cases considered by the committee.

Thus, the Internal Security Committee is a statutorily created committee of the Industrial Commission and the Bureau of Workers' Compensation. Both the commission and the bureau are governmental agencies. The committee thus qualifies as a "committee . . . of a state agency. . ."

The only remaining issue to be considered is whether the committee is, in fact, a decision-making body.

The Internal Security Committee does not occupy the status of a subordinate agency or committee, the only function of which is to make recommendations to its parent organization. Such an advisory committee, it might be argued, does not qualify as a decision-making body in the strict sense of the term. But cf. Palm Beach v. Gradison, 296 So. 2d 473 (Fla. 1974) (the provisions of an open-meeting statute substantially similar to R.C. 121.22 was held to apply to meetings of a citizens' planning committee that was appointed by a town council); Cathcart v. Andersen, 10 Wash. App. 429, 517 P. 2d 980 (1974) (open meeting statute held applicable to all committee meetings of a university board of trustees). Although the status of such advisory committees under R.C. 121.22 is problematic, the issue need not be considered in the present analysis. The Internal Security Committee, even though comprised of appointees of the Bureau of Workers' Compensation and the Industrial Commission, is more than an informal advisory committee. It is a statutorily created, independent entity that performs expressly defined duties of an ongoing nature. As such, it differs fundamentally from an informal, ad-hoc committee created by and for the convenience of a parent body.

It is true that the decisions made by the committee involve little more than the investigation of commission and bureau personnel. It is not, for instance, authorized to take final disciplinary action with respect to the subjects of the investigations that it conducts. There is, however, nothing in the language of R.C. 121.22 that would suggest that the scope of the statute is limited to entities authorized to render final decisions of the type that fundamentally affect the rights of individuals. The decisions made by the committee, however provisional or removed from the rights of the parties involved are, nonetheless, decisions. I must, therefore, conclude that the Internal Security Committee is a decision-making body as that term is used in R.C. 121.22.

Finally, it should be noted that since the members of the committee are vested with statutory authority, they exercise certain sovereign powers that establish them as public officers. See, Herbert v. Ferguson, 142 Ohio St. 496, 501

(1944). Since R.C. 121.22 must be liberally construed to require public officers to conduct official business in open-meetings, the inclusion of the Internal Security Committee within the terms of the statute is entirely appropriate.

The fact that the committee is a public body for purposes of R.C. 121.22 does not, however, mean that all of its deliberations must categorically be conducted openly. Reflecting a legislative attempt to strike a balance between the public's desire for access and the government's need for secrecy, R.C. 121.22 authorizes executive sessions in several well defined instances. The committee is, of course, free to take full advantage of such exceptions.

In answer to your question, it is my opinion and you are so advised that the Internal Security Committee, established by the Industrial Commission and the Bureau of Workers' Compensation pursuant to R.C. 4121.122(D), is a public body for purposes of R.C. 121.22.