

Note from the Attorney General's Office:

1980 Op. Att'y Gen. No. 80-083 was overruled in part by
2011 Op. Att'y Gen. No. 2011-038.

OPINION NO. 80-083**Syllabus:**

1. A county central committee of a political party is a public body and its members are public officials for purposes of R.C. 121.22.
2. The convening of the members of the county central committee pursuant to R.C. 305.02 is a "meeting" as defined by R.C. 121.22(B)(2), even when the number of members present is fewer than the majority of the total membership.
3. A county central committee may discuss the appointment of a person pursuant to its duties under R.C. 305.02 in executive session under R.C. 121.22(G). However, final voting on such appointment must be held in a public meeting.
4. R.C. 121.22 does not require a roll call vote or prohibit voting at a meeting subject to that section by "secret ballot."

5. The convening of the county central committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices, is not a "meeting" as defined by R.C. 121.22(B)(2). Thus, R.C. 121.22 does not apply to such a gathering.

To: J. Walter Dragelevich, Trumbull County Pros. Atty., Warren, Ohio
By: William J. Brown, Attorney General, December 3, 1980

I have before me your request for my opinion concerning whether a county central committee of a political party must comply with the provisions of R.C. 121.22, popularly known as the "Sunshine Law," particularly in reference to the committee's meetings held pursuant to R.C. 305.02. More specifically, your questions are as follows:

1. Is a county central committee of a political party a "public body" as defined in Section 121.22(B)(1), Ohio Revised Code?
2. Is the convening of the county central committee, pursuant to Section 305.02, Ohio Revised Code, a "meeting" as defined in Section 121.22(B)(2), Ohio Revised Code?
3. If the answers to the foregoing questions are in the affirmative, do any of the exclusions found in Section 121.22(G) allow for an executive session to fill a vacancy?
4. If the central committee of the political party is found to be subject to the Sunshine Law when holding an election pursuant to Ohio Revised Code Section 305.02, can said election be by "secret ballot" as opposed to a roll call vote of all members present?
5. Would Section 121.22, Ohio Revised Code, apply to a meeting of the political central committee when the purpose of the meeting is party business other than the filling of a vacancy under Section 305.02, Ohio Revised Code?

R.C. 121.22, which generally requires all public bodies to conduct official business in meetings open to the public, provides in pertinent part:

(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.

As I noted in 1976 Op. Att'y Gen. No. 76-062, the best indication of the scope of R.C. 121.22 is provided by its introductory provision, which reads:

(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.

In Op. No. 76-062 at 2-211, I interpreted this provision to mean that, "the General Assembly apparently intended the statute to apply to all bodies which are comprised of public officials." See also 1979 Op. Att'y Gen. No. 79-110; 1979 Op. Att'y Gen. No. 79-061.

The members of a county central committee of a political party have been found to be public officers by virtue of the sovereign function of government conferred upon them by R.C. 305.02. State ex rel. Hayes v. Jennings, 173 Ohio St. 370, 182 N.E. 2d 546 (1962). R.C. 305.02 authorizes the county central committee to fill vacancies which may occur in the county offices of sheriff, coroner, engineer, recorder, auditor, treasurer, clerk of the common pleas court, and prosecuting attorney. Persons so appointed by the county central committee hold office until a successor is elected and qualified. Because R.C. 305.02 authorizes the committee to exercise, for the public benefit, official powers that involve the sovereign functions of government, the court concluded that members of the committee are public officers.¹ See Jackson v. Coffey, 52 Ohio St. 2d 43, 368 N.E. 2d 1259 (1977) (holding that county central committee membership falls within the political activities proscribed for classified employees); State ex rel. Cain v. Kay, 38 Ohio St. 2d 15, 309 N.E. 2d 860 (1974) (holding that the chairman of a state central committee was not a public officer, because, unlike the county committee, the duties of state committees are exercisable only with respect to the internal affairs of the political party within the bounds of the party); State ex rel. McCurdy v. DeMaiores, 9 Ohio App. 2d 280, 224 N.E. 2d 353 (1967) (holding that the office of chairman of a county central committee is a public office for purposes of quo warranto). See also 1970 Op. Att'y Gen. No. 70-011 (discussing differences between powers of a county central committee and powers of a state central committee). Thus, because the county central committee is comprised of public officials, the committee is a public body and subject to the "Sunshine Law" by virtue of R.C. 121.22(A).

R.C. 121.22(B)(2) defines "meeting" as "any prearranged discussion of the public business of the public body by a majority of its members." R.C. 305.02(C) requires the county committee to meet for the purpose of making an appointment pursuant to that section. It is my opinion that such a meeting meets the definition of R.C. 121.22(B)(2). Pursuant to R.C. 305.02(C), every member must be sent notice of the time, place, and purpose of the meeting at least four days before the date of the meeting. Thus, the discussion is prearranged for purposes of R.C. 121.22(B)(2). Because it is precisely the committee's power to appoint the enumerated officers pursuant to R.C. 305.02 which makes the committee members public officers and the committee a public body, it is clear that a meeting held pursuant to R.C. 305.02 in order to exercise this appointive power involves a discussion of the public business. It is through this meeting that the sovereign function of government bestowed upon the committee is exercised.

¹Since the Hayes decision was rendered, the county central committee has been granted additional appointive powers. R.C. 733.31(C) and (D) (1975-1976 Ohio Laws 232) provide that, in specified circumstances, the city residents of the committee shall fill vacancies in the city offices of president of the legislative authority, director of law, auditor, and treasurer. Persons so appointed hold office until a successor is elected and qualified. Am. Sub. H.B. 1026, recently passed by the 113th General Assembly and effective October 24, 1980, amends R.C. 731.43 and R.C. 1901.31. Those sections now provide that the municipal residents of the central committee shall, in specified circumstances, fill vacancies in the offices of member of the city legislative authority and municipal court clerk, respectively. An appointee to the legislative authority shall hold office for the remainder of the unexpired term. An appointee to the office of municipal court clerk shall serve until a successor is elected and qualified. The discussion in this opinion of meetings held pursuant to R.C. 305.02 would appear to apply also to meetings held pursuant to R.C. 731.43, R.C. 733.31, and R.C. 1901.31.

R.C. 121.22(B)(2) defines "meeting" as a discussion by a majority of the public body's members. In most instances, state statute or the body's own regulations will require a majority of the members of a public body to be present in order for the body to act. However, R.C. 305.02(C) states that a "majority of the members of the central committee present at such meetings may make the appointment" (emphasis added), thereby indicating that a quorum consists of the number of persons present at a meeting held pursuant to R.C. 305.02, even if such number is fewer than the majority of the entire committee.² It is my opinion that, even though a meeting under R.C. 305.02 may be attended by fewer than a majority of the members of the public body, R.C. 121.22 is still applicable to such a meeting. R.C. 121.22(A), which defines the scope of R.C. 121.22, requires the section to 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.) R.C. 121.22(H) states: "A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." (Emphasis added.) These two provisions clearly demonstrate that the General Assembly intended to require public bodies to take all official action in open meetings. I conclude, therefore, that a meeting of a central committee held pursuant to R.C. 305.02(C) does not escape the application of R.C. 121.22 simply because fewer than a majority of the total membership is present. However, I am not of the opinion that R.C. 121.22(B)(2) can be interpreted to mean that a majority of the committee must be present in order to exercise the committee's power of appointment. This would, in effect, repeal a portion of R.C. 305.02(C). Such an implied repeal is disfavored in the law. *State v. Ruppert*, 54 Ohio St. 2d 263, 375 N.E. 2d 1250 (1978); *Lucas County Board of Commissioners v. Toledo*, 28 Ohio St. 2d 214, 277 N.E. 2d 193 (1971). Rather, it is my conclusion that the committee may act pursuant to the quorum rule established by R.C. 305.02, but that a meeting held pursuant to that statute must be open to the public, even if such meeting is attended by fewer than the majority of the total membership.

Thus, in keeping with the scope of the Sunshine Law, as delineated by R.C. 121.22(A) and R.C. 121.22(H), I interpret "a majority of its members" as used in the definition of "meeting" in R.C. 121.22(B)(2) to mean the number of a public body's members required to be present to take official action, when such number is fewer than the majority of the body's total membership. In conclusion, I believe that the convening of the county central committee pursuant to R.C. 305.02 is a "meeting" as defined in R.C. 121.22(B)(2), even though fewer than the majority of the total membership may be present, and such convening must be held in compliance with R.C. 121.22.

In certain circumstances, a public body may hold an executive session at a meeting, pursuant to R.C. 121.22(G). At an executive session, the public is excluded and only selected persons who are invited by the public body may be present. The test of an executive session is said to be "not who is present at a meeting of the governmental body, but whether the meeting is open to the public." *Thomas v. Board of Trustees*, 5 Ohio App. 2d 265, 268, 215 N.E. 2d 434, 436 (Trumbull County 1966). In an executive session, a public body may deliberate and discuss in private certain matters enumerated by statute. However, while such deliberations may be made privately, no final binding action may be taken, nor may any formal resolution, rule, or regulation be passed. Any formal action must be adopted in an open meeting in order to be valid. R.C. 121.22(H). Voting is considered to be a final action, which must be done publicly. *State ex rel. Humphrey v. Adkins*, 18 Ohio App. 2d 101, 247 N.E. 300 (Montgomery County 1969).

R.C. 121.22(G)(1) states that a public body may consider in executive session the appointment of a public employee or official. Under this language it appears

²R.C. 731.43 and R.C. 1901.31, as amended by Am. Sub. H.B. 1026, do provide that a majority of all committee members of the city or municipal court district, respectively, constitutes a quorum, and a majority of the quorum is required to make the appointment.

that, while deliberating upon the appointment of a person pursuant to R.C. 305.02, a county central committee may meet in executive session. However, any formal and binding action, including a final vote, must be taken in a public session. Minutes of the executive session must still be taken, but they need reflect only the general subject matter of the discussion. R.C. 121.22(C).

You ask whether an election held pursuant to R.C. 305.02 may be by "secret ballot," or must be by roll call vote in order to comply with R.C. 121.22. As noted above, the final election made pursuant to R.C. 305.02 must be held in a public meeting. R.C. 121.22(H); State ex rel. Humphrey v. Adkins. However, R.C. 121.22 is silent as to the method of voting, and there is no case law or opinion from this office on this particular issue. R.C. 121.22(A) states: "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.) R.C. 121.22 provides in part: "A resolution, rule, or formal action of any kind is invalid unless adopted in an open meeting of the public body." (Emphasis added.) The clear language of the statute requires only that business be transacted in a meeting that is open to the public. A meeting which is open to the public refers to the presence of individuals. See 1974 Op. Att'y Gen. No. 74-072. The statute says nothing about the necessity of a roll call vote. As long as the public body's meeting is open to the public, and complies in all other respects with R.C. 121.22, I am constrained by the plain language of the statute to conclude that it does not require a roll call vote, nor does it prohibit voting by "secret ballot."³ Although R.C. 121.22 provides that the statute must be liberally construed "to require public officials to take official action. . . in open meetings," this rule of statutory construction cannot be read to impose additional requirements that are not imposed by the specific language of the statute. See 1979 Op. Att'y Gen. No. 79-061.

Your final question asks whether R.C. 121.22 applies to a meeting of the county central committee when the purpose of the meeting is to conduct internal party business rather than to fill a vacancy pursuant to R.C. 305.02. In answering this question, it is necessary to consider the nature of a county central committee of a political party. It appears that such a committee possesses certain features of both a public and private body. As discussed above, a county central committee is a public body by virtue of the power bestowed by R.C. 305.02. However, such a committee also has features of a private body. "Political parties are basically voluntary associations of persons who act together principally for party and community purposes." State ex rel. Cain v. Kay, 38 Ohio St. 2d at 18, 309 N.E. 2d at 863. Traditionally courts have been reluctant to interfere in the internal affairs of political parties since parties are basically voluntary associations which have their own rules and procedures for regulating internal affairs. State ex rel. Cain v. Kay; State ex rel. McCurdy v. DeMaiores. R.C. Chapter 3517 deals with the internal matters of political parties. It provides for the establishment and organization of controlling committees of each major political party, including a county central committee. R.C. Chapter 3517 also regulates the activity of political parties with regard to partisan campaigns and elections, including the reporting of campaign contributions and expenditures.

R.C. 121.22(B)(2) defines "meeting" as "any prearranged discussion of the public business of the public body by a majority of its members." (Emphasis added.)

³This opinion does not address separate constraints which may be put upon voting at a meeting of a county central committee by political party constitutions and by-laws. For example, the Ohio Democratic Party Constitution and By-laws, Article XII, §10, requires that voting by a county central committee to select persons for public office "shall be in accordance with the standards set by the Charter and By-laws of the Democratic Party of the United States." The Charter of the latter in Article Eleven, §12, requires that all meetings of official Party committees be open to the public and that voting not be taken by secret ballot.

As discussed above, a meeting held pursuant to R.C. 305.02 is held to discuss public business for purposes of R.C. 121.22. It is the sovereign power bestowed upon the county central committee by R.C. 305.02 that makes the committee members public officers and the committee a public body. State ex rel. Cain v. Kay; State ex rel. Hayes v. Jennings; State ex rel. McCurdy v. DeMaioribus; Op. No. 70-011. The exercise of such sovereign power through a meeting held pursuant to R.C. 305.02 must necessarily be considered public business. However, party officers cannot be considered public officers by virtue of R.C. Chapter 3517 or because of their role in the internal affairs of the party. See State ex rel. Cain v. Kay. They are public officers because of their activity outside the sphere of these internal affairs. The conducting of internal party business is not considered the exercise of a sovereign function of government, and thus cannot be considered "public business" for purposes of R.C. 121.22(B)(2). Thus, it is my opinion that R.C. 121.22 does not apply to a county central committee when the committee is discussing purely internal party business, unrelated to its duties of making appointments to vacant offices, because such a discussion is not a "meeting" for purposes of R.C. 121.22. See Op. No. 79-061 (concluding that the applicability of R.C. 121.22 depends on the functions being performed by an organization with both public and private features). See also Op. No. 76-062.

In conclusion, it is my opinion, and you are advised, that:

1. A county central committee of a political party is a public body and its members are public officials for purposes of R.C. 121.22.
2. The convening of the members of the county central committee pursuant to R.C. 305.02 is a "meeting" as defined by R.C. 121.22(B)(2), even when the number of members present is fewer than the majority of the total membership.
3. A county central committee may discuss the appointment of a person pursuant to its duties under R.C. 305.02 in executive session under R.C. 121.22(G). However, final voting on such appointment must be held in a public meeting.
4. R.C. 121.22 does not require a roll call vote or prohibit voting at a meeting subject to that section by "secret ballot."
5. The convening of the county central committee for the purpose of conducting purely internal party affairs, unrelated to the committee's duties of making appointments to vacant public offices, is not a "meeting" as defined by R.C. 121.22(B)(2). Thus, R.C. 121.22 does not apply to such a gathering.