

OPINION NO. 92-065**Syllabus:**

A housing advisory board created by a county under R.C. 176.01 is a public body for purposes of R.C. 121.22.

To: Mathias H. Heck, Jr., Montgomery County Prosecuting Attorney, Dayton, Ohio

By: Lee Fisher, Attorney General, December 29, 1992

Your predecessor has asked whether a housing advisory board established by a county under R.C. 176.01 is a "public body" for purposes of R.C. 121.22, commonly referred to as the Sunshine Law.

Open Meetings Under R.C. 121.22

R.C. 121.22 establishes a number of requirements concerning notice and the conduct of meetings¹ of all public bodies. The fundamental requirement is set forth in division (C), stating: "All meetings of any *public body* are declared to be public meetings open to the public at all times." (Emphasis added.)

For purposes of R.C. 121.22, a "public body" is defined in R.C. 121.22(B)(1), as meaning:

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.* (Emphasis added.)

Your predecessor specifically asked whether a housing advisory board that has been created by a county in accordance with R.C. 176.01 is a public body, as defined in R.C. 121.22(B)(1). The concern is that since a housing advisory board generally acts only in an advisory capacity, it may not constitute a public body subject to the open meeting requirements of R.C. 121.22.

Housing Advisory Boards

R.C. 176.01(A) provides for the establishment or designation of housing advisory boards by any municipal corporation, township, or county, or by a combination of certain of those entities. When established by a county, as in the situation you describe, R.C. 176.01(D) states that the board of county commissioners

¹ For purposes of R.C. 121.22, a "meeting" is defined as "any prearranged discussion of the public business of the public body by a majority of its members." R.C. 121.22(B)(2).

shall either appoint the members of the county housing advisory board or designate an existing county agency, subject to the representation requirement of R.C. 176.01(C), to serve as such board.

R.C. 176.01(B) sets forth the purposes of a housing advisory board, as follows:

(1) To receive and review comprehensive plans for the development and maintenance of affordable housing submitted to the housing advisory board pursuant to [R.C. 176.04(A)(2)] by any such political subdivision it serves;

(2) To receive and review written descriptions submitted to the housing advisory board pursuant to [R.C. 176.04(A)(3)] by any subdivision it serves of the purposes to which such subdivision proposes to apply the proceeds of general obligations such subdivision proposes to issue or the moneys raised by taxation that such subdivision proposes to expend pursuant to [Ohio Const. art. VIII, §16];

(3) To advise the subdivisions it serves regarding the plans and descriptions it receives pursuant to divisions (B)(1) and (2) of this section; and

(4) To perform such other advisory functions for any subdivision it serves related to such subdivision's programs to provide, or assist in providing, housing as such subdivision may request it to perform.

Further, R.C. 176.01(H) requires that each housing advisory board provide to the Department of Development "such reports and information regarding the board's activities as the department may require."

Pursuant to R.C. 176.04, no municipality, county, or township may issue general obligations under R.C. 133.51 or expend tax moneys to provide, or assist in providing, housing pursuant to Ohio Const. art. VIII, §16,² unless it has, among other things, established or designated a housing advisory board under R.C. 176.01 or contracted for the services of such a board pursuant to R.C. 176.02. In addition, prior to issuing such obligations or expending such moneys, a subdivision must submit to the board for review, comments, and recommendations a comprehensive housing affordability strategy and a written description of the purposes to which the moneys raised by the subdivision will be applied.

Applicability of R.C. 121.22(B)(1) to A County Housing Advisory Board

The General Assembly has expressed its intent that the provisions of R.C. 121.22 "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." R.C. 121.22(A). Generally, where, by law, the membership of a particular entity is comprised of public officials or where its duties are of a public nature, the entity is a public body for purposes of R.C. 121.22. *See, e.g., State ex rel. Toledo Blade Co. v. Economic Opportunity Planning Ass'n*, 61 Ohio Misc. 2d 631, 639-40, 582 N.E.2d 59, 65 (C.P. Lucas County 1990) (finding the association to be a public body based on its designation as a

² Ohio Const. art. VIII, §16 sets forth the circumstances and limitations under which the state and its political subdivisions are authorized to provide, or assist in providing, housing in the state for individuals or families.

community action agency by the Department of Development under R.C. 122.69, resulting in its possession of "a range of rights, duties and powers that are inherently characteristic of a public body" and its responsibility and accountability for the expenditure of substantial sums of public funds); 1979 Op. Att'y Gen. No. 79-061 (private, non-profit corporation, statutorily designated as an agent of a political subdivision, is a public body); 1978 Op. Att'y Gen. No. 78-059 at 2-146 (finding an entity to be a public body, based upon the fact that it is "a statutorily created, independent entity that performs expressly defined duties of an ongoing nature").

The members of a housing advisory board created by a county are, pursuant to R.C. 176.01(D), appointed or designated to serve by the county commissioners and their terms are fixed by the county commissioners.³ The members perform express statutory duties of an ongoing nature, which functions are, by statute, necessarily part of a political subdivision's carrying out the public purpose expressed in Ohio Const. art. VIII, §16. Thus, a housing advisory board created by a county pursuant to R.C. 176.01 is clearly a "public body," for purposes of R.C. 121.22.

The concern expressed by your predecessor is that since a housing advisory board acts generally in an advisory capacity, it may not have sufficient decision-making authority to qualify as a public body under R.C. 121.22(B)(1). As stated in *Stegall v. Joint Township District Memorial Hospital*, 20 Ohio App. 3d 100, 102, 484 N.E.2d 1381, 1383 (Auglaize County 1985), within the definition of "public body," set forth in R.C. 121.22(B), "[i]t is implied that the board must be a 'decision-making body'" (emphasis added).

However, as Op. No. 79-061 states at 2-205:

A simple recommendation, however tentative and far removed from the legal rights of others, is the result of decision-making. Since any collective body is, in this sense, involved in the process of decision making, the phrase is of no assistance in delineating the scope of the term "public body" under R.C. 121.22.

See also Op. No. 78-059 at 2-146 ("[t]here is...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").

In this regard, R.C. 176.04(C) states that, "[n]o approval of a housing advisory board shall be required for issuance of general obligations pursuant to [R.C. 133.51] or any proposed expenditure of moneys raised by taxation to provide, or assist in providing, housing pursuant to [Ohio Const. art. VIII, §16]" (emphasis added). Pursuant to the scheme established by R.C. 176.04, however, no municipality, county, or township may proceed to issue such obligations or expend such funds without review, comments, and advice from a housing advisory board.

³ Pursuant to R.C. 176.03, membership on a housing advisory board under R.C. 176.01 or R.C. 176.02 "does not constitute the holding of a public office or employment by a political subdivision." Since this provision is clearly intended to eliminate problems from potential conflicts of interest or incompatibility of public positions, it has no bearing on whether such members comprise a "public body" for purposes of R.C. 121.22. See 1979 Op. Att'y Gen. No. 79-061 at 2-206 (interpreting similar language concerning membership on a community improvement corporation, which is, when designated as an agent of a political subdivision, a public body for purposes of R.C. 121.22).

The review, comment, and recommendations of a housing advisory board are, therefore, necessarily part of any political subdivision's implementation of the provisions of Ohio Const. art. VIII, §16. Thus, although a housing advisory board does not "approve" any proposed issuance of general obligations or expenditure of tax moneys relating to housing assistance under Ohio Const. art. VIII, §16, it does engage in decision-making in reviewing such plans and in rendering its advice and recommendations.

Conclusion

Based on the foregoing, it is my opinion, and you are hereby advised that, a housing advisory board created by a county under R.C. 176.01 is a public body for purposes of R.C. 121.22.