

OPINION NO. 85-048**Syllabus:**

The open meeting requirements of R.C. 121.22 and R.C. 305.09 are satisfied where a board of county commissioners convenes a public meeting at which only two of the three members are present and the third member of the board, who is not physically present, participates in such board proceedings by means of communications equipment.

To: Anthony G. Pizza, Lucas County Prosecuting Attorney, Toledo, Ohio
By: Anthony J. Celebrezze, Jr., Attorney General, August 15, 1985

I have before me your request for my opinion concerning compliance with state open meeting requirements. I have restated your question as follows: Where two members of a board of county commissioners convene a public meeting, may the third board member, who is not physically present at the meeting, participate in the meeting by means of communications equipment?

Your question arises within the context of the recently enacted Public Employee Collective Bargaining Act, R.C. Chapter 4117. The specific provision with which you are concerned, R.C. 4117.14, contains procedures which govern the settlement of disputes between an exclusive employee representative, see R.C. 4117.01(E), and a public employer, see R.C. 4117.01(B), "concerning the termination or modification of an existing collective bargaining agreement or negotiation of a successor agreement, or the negotiation of an initial collective bargaining agreement." R.C. 4117.14(A). See R.C. 4117.10(C) ("the designated representative of the board of county commissioners and of each elected officeholder of the county whose employees are covered by the collective negotiations. . . is responsible for negotiations in the collective bargaining process; except that the legislative body [which includes the board of county commissioners] may accept or reject a proposed collective bargaining agreement;" an agreement which is reduced to

writing and approved by the legislative body and employee organization "is binding upon the legislative body, the employer, and the employee organization and employees covered by the agreement"). See also R.C. 4117.10(B). If the parties are unable to reach an agreement, the dispute may eventually be submitted to a fact-finding panel, which "shall . . . gather facts and make recommendations for the resolution of the matter." R.C. 4117.14(C)(3)(a). The fact-finding panel, acting by a majority of its members, shall transmit its findings of fact and recommendations on the unresolved issues to the public employer and employee organization involved and to the state employment relations board. R.C. 4117.14(C)(5).

Your question pertains to the stage in the procedure set forth in R.C. 4117.14(C)(6) in pertinent part, as follows:

Not later than seven days after the findings and recommendations are sent, the legislative body, by a three-fifths vote of its total membership, . . . may reject the recommendations; if [the legislative body does not reject] the recommendations, the recommendations shall be deemed agreed upon as the final resolution of the issues submitted and a collective bargaining agreement shall be executed between the parties, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement.

Thus, R.C. 4117.14(C)(6) provides that not later than seven days after the findings and recommendations of the fact-finding panel are sent, the appropriate legislative body, such as a board of county commissioners, see R.C. 4117.10, by a three-fifths vote of its total membership, may reject the recommendations. R.C. 4117.14(C)(6) further provides that if the legislative body does not reject the recommendations, "the recommendations shall be deemed agreed upon as the final resolution of the issues submitted and a collective bargaining agreement shall be executed between the parties, including the fact-finding panel's recommendations, except as otherwise modified by the parties by mutual agreement."

You are concerned with the situation where the board of county commissioners, with two members present and one member absent, passes upon the recommendations of the fact-finding panel at a public meeting and the votes of the two members are split. Under those circumstances, the recommendations will not have been rejected by a three-fifths vote, and thus, pursuant to R.C. 4117.14(C)(6), the recommendations shall be deemed agreed upon. Accordingly, the board of county commissioners finds it imperative that the third member, who cannot be physically present at the meeting, be given an opportunity to participate in the meeting to break the tie vote. You ask whether the state open meeting requirements are satisfied when the third board member participates in discussions and casts his vote by means of communications equipment whereby the board member may hear and be heard by those attending the meeting.

R.C. 305.09 provides in pertinent part that, "[a]ll the proceedings of the board of county commissioners shall be public." R.C. 121.22 also imposes open meeting requirements upon public bodies. R.C. 121.22, which is popularly known as the "Sunshine Law," provides that "[a]ll meetings of any public body are declared to be public meetings open to the public at all times." R.C. 121.22(C). See R.C. 121.22(H). R.C. 121.22 which defines the terms "public body" and "meeting" provides in pertinent 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,

¹ R.C. 305.01 provides that, "[t]he board of county commissioners shall consist of three persons." R.C. 305.08 provides that "[a] majority of the board shall constitute a quorum at any regular or special meeting."

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) "Meeting" means any prearranged discussion of the public business of the public body by a majority of its members. (Emphasis added.)

A board of county commissioners is a board of a county, see generally R.C. Chapter 305, and is clearly a public body within the meaning of R.C. 121.22. See generally *City of Moraine v. Board of County Commissioners*, 67 Ohio St. 2d 139, 423 N.E.2d 184 (1981) (wherein the court applied the "Sunshine Law" to a meeting of a board of county commissioners). Since a board of county commissioners is a public body within the meaning of R.C. 121.22, all meetings of the board—that is, all prearranged discussions of the public business of the board by a majority of its members—must be, pursuant to R.C. 121.22(C), "public meetings open to the public at all times."

I believe that where a board of county commissioners convenes a public meeting with two members physically present and one of the members of the board is absent but casts a vote or participates in deliberations during the meeting by means of communications equipment, such a meeting remains a public meeting under R.C. 305.09 and is, indeed, a public meeting open to the public at all times under R.C. 121.22, so long as such voting or deliberations take place within the hearing of those present at the meeting.² This conclusion becomes apparent upon examination of the purpose of R.C. 121.22, which is to "afford to citizens the maximum opportunity, consistent with the protection of the public and of innocent persons, to observe and participate in the conduct of the public business." Legislative Service Commission Analysis of Am. Sub. S.B. 74, 113th Gen. A. (1975) (eff. Nov. 28, 1975). See R.C. 121.22(A). Such purpose is clearly served when a board member participates in a meeting by means of communications equipment. Although the board member is not physically present at the meeting, he may participate as fully in the board proceedings as if he were present, and his remarks may be heard by those attending the meeting. The public is not excluded from the board's meeting, but, rather, is given a full chance "to observe and participate in the conduct of the public business."

In conclusion, it is my opinion, and you are so advised, that the open meeting requirements of R.C. 121.22 and R.C. 305.09 are satisfied where a board of county commissioners convenes a public meeting at which only two of the three members are present and the third member of the board, who is not physically present, participates in such board proceedings by means of communications equipment.

² I note that members of a public body may hold an executive session at a regular or special meeting for various purposes set forth in R.C. 121.22(G), including for the purpose of "preparing for, conducting, or reviewing negotiations or bargaining sessions with public employees concerning their compensation or other terms and conditions of their employment." R.C. 121.22(G)(4). Members of the public may be excluded from executive sessions, including those executive sessions in which a board member participates by means of communications equipment. Although the public may be excluded from deliberations held in an executive session, any formal action of the board must be taken in an open meeting. R.C. 121.22(H). See 1980 Op. Atty Gen. No. 80-083 at 2-329.